

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA * Case No. 17-CR-00281 (ERK)
 *
 * Brooklyn, New York
 * January 9, 2018
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CARLOS RICHARD MARTINEZ, *
 *
 * Defendant.
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* * * * * *

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE EDWARD R. KORMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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 UNITED STATES ATTORNEY

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Proceedings

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1 (Proceedings commenced at 11:21 a.m.)

2 THE CLERK: United States v Carlos Richard Martinez.

3 Your appearances, counsel.

4 MS. ARGENTIERI: Nicole Argentieri and Nadia Shihata
5 for the United States. Good morning, Judge.

6 MS. SHIHATA: Good morning.

7 MR. RICCO: Good morning, your Honor. Anthony Ricco,
8 for Carlos Martinez, and your Honor, I'm joined by law office
9 paralegal.

10 THE COURT: Is there any reason -- well, let's bring
11 in the jury but is there is any reason why the jury should not
12 be sworn?

13 MR. RICCO: No, your Honor.

14 MS. ARGENTIERI: No, Judge.

15 THE COURT: Okay.

16 (Jury enters the courtroom)

17 THE CLERK: All rise. Ladies and gentlemen, you may
18 be seated. Jurors please raise your right hands.

19 (Jurors duly sworn)

20 THE COURT: This is ironic, isn't it that on the
21 nicest day in about two weeks there's a subway delay.

22 Good morning, ladies and gentlemen. We are about to
23 begin the trial of this criminal case, about what you heard
24 something during the process of jury selection. Before the
25 trial begins, however, there are certain things that I wish to

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1 tell you which will help you understand what will be presented
2 to you and how you should conduct yourselves during the trial.

3 To begin with, you're here to administer justice in
4 this case according to the law and the evidence with complete
5 fairness and impartiality and without bias, prejudice or
6 sympathy for or against the government or the defendants.

7 This is important, that a defendant who is charged
8 with a crime has the constitutional right to receive a fair
9 trial. The case is also important to the government since the
10 enforcement of the criminal laws is important.

11 Now, this case is based on an indictment which has
12 already been read to you by the United States magistrate judge
13 during jury selection and will be discussed by the parties.

14 An indictment is simply the document by which a
15 criminal action has been commenced and is merely an accusation
16 of a charge and is not evidence of the defendant's guilt.
17 Since the defendant has pleaded not guilty, the government has
18 the burden of proving each of the essential elements of the
19 indictment beyond a reasonable doubt and the purpose of this
20 trial is to determine whether the government meets this burden.
21 And the defendant does not have to prove his innocence, on the
22 contrary, the defendant is presumed to be innocent of the
23 accusations contained in the indictment.

24 The trial will proceed in the following order:
25 First, the parties have an opportunity to make opening

1 statements. The government will make such a statement and then
2 the defendant, though he is not obligated to do so, may make an
3 opening statement through his attorney or may defer it until
4 the end of the governments's case. What is said in these
5 statements is not evidence but simply an introduction to the
6 evidence which the parties intend to produce.

7 After the opening statements, the government will
8 produce evidence in support of the charges and third, that the
9 defendant may present evidence but is not required to do so.
10 The burden is always on the government to prove every element
11 in the offense charged beyond a reasonable doubt. The law
12 never imposes on the defendant in a criminal case the burden of
13 calling any witnesses or introducing any evidence at all.

14 After all the evidence has been presented, each party
15 has the opportunity to present argument in support of their
16 case, what we call summations. What is said in these
17 summations is not evidence but they simply present to you the
18 contentions of the parties as to what the evidence has shown
19 and what inference you should maybe draw from the evidence.

20 The government has the right to open and close -- the
21 government has the right to make the opening summation, then
22 the defendant sums up and because the government bears the
23 burden of proof in this case and will ultimately have an
24 opportunity to make a rebuttal summation.

25 Finally, I will instruct you as to the applicable law

1 and then you will retire to consider your verdict. Your
2 verdict must be unanimous, regardless of whether the verdict is
3 guilty or not guilty and that's true if it's a multi-count
4 indictment; every count in the indictment.

5 You have a tremendously important task as jurors. It
6 is to determine the facts. Our Constitution gives the
7 defendant the right to have you or members of the community to
8 find those facts. You and not I are the sole judges of the
9 facts. I shall try to preside impartially and not to express
10 any opinion concerning the facts. However, if at any time I
11 should make any comment with respect to the facts, you may
12 disregard it. It is your judgement as to the facts, not mine
13 which controls. As a sole judge of the facts, you must
14 determine which of the witnesses you believe, what portion of
15 their testimony you'll accept and what weight you attach to it.

16 Where an objection to a question is sustained,
17 disregard the question and draw no inference about its wording,
18 about the answer that might have been given. Where an
19 objection is overruled, I ask that it receive no special weight
20 just because it was unsuccessfully objected to.

21 You must not consider anything you may have read or
22 heard about the case outside the courtroom, whether before or
23 during trial. And no statement, ruling, remark or comment
24 which I may make during the course of the trial is intended to
25 indicate any opinion as to how you should decide the case or to

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1 influence you in any way in your deliberation of the facts.

2 If so -- at times, rather, I may ask questions of
3 witnesses. If so, it is for the purpose of bringing out
4 matters which I feel should be brought out and not in any way
5 indicating an opinion by the facts or to indicate that you
6 should give to the testimony of the witness.

7 Now, there are several rules which should govern your
8 conduct during any recesses that we may take. You will not be
9 required to remain together while the court is in recess but
10 you are required to follow these instructions about recesses.

11 First, do not discuss the case among yourselves or
12 with anyone else. You should keep an open mind reaching your
13 conclusion only during your final deliberations after all the
14 evidence is in and you've heard the attorney's summations and
15 my instructions on the law and then only after an interchange
16 of views with other members of the jury.

17 Now, under the instruction I've just given you, is
18 somewhat counter intuitive. I mean, serving on a jury is an
19 interesting experience. It's something that you would
20 naturally want to talk to people about, family, friends and we
21 don't want you to do that because we want you to decide the
22 case based solely on what you hear in court. And once you get
23 into a discussion with other people about the case, you're
24 going to be hearing their views about how you should decide the
25 case. And so we don't want you to do that. We don't want you

1 to discuss the case with anyone other than your fellow jurors
2 and only when you've been given the case after the whole trial
3 is over.

4 And what I've said to you about not discussing the
5 case, even among yourselves, again, that's counterintuitive too
6 because after all, that's what brings you together at the
7 moment, it's this case. And when you're in the jury room and
8 you've heard what's been going on in the courtroom, and so
9 there's a natural desire to start talking about it and the
10 reason that we ask you not to do that is because we want you to
11 decide the case only after you've heard all the evidence, the
12 attorney's summations, my instructions on the law. And we're
13 concerned that if you begin -- if jurors begin, not necessarily
14 you, but if jurors begin discussing the case before that time
15 they might jump to premature conclusions about the case and we
16 don't want you to do that until you've heard everything. So
17 please try and follow these instructions even though they may
18 seem, as I've said, counterintuitive.

19 And second, do not permit any person to discuss this
20 case in your presence and if anyone should come up to you and
21 begin talking about the case, even though you tell them not to
22 report that fact to me, you should not, however, discuss with
23 your fellow jurors either that fact or any other fact if you
24 feel it necessary to bring to my attention.

25 And third, known as a normal human reaction to talk

Government's Opening Statement

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1 with people with whom one is thrown into contact. Please do
2 not do so ever, in the courtroom, in the hallways, in the
3 elevator, outside or anywhere else with any of the parties or
4 their attorneys or any witnesses. By this I mean, not only do
5 not talk about the case but do not talk at all.

6 And finally, there is one additional instruction and
7 it relates to the use of cell phones, the internet and other
8 tools of technology. I believe the magistrate has instructed
9 you about them but I want to reiterate that fact. As I told
10 you, you must not talk to anyone at any time about this case or
11 use these particular tools to communicate with anyone about the
12 case. This includes your family and friends. You may not
13 communicate about the case on your cell phone through email,
14 BlackBerry, if anybody still has one, iPhone, text messages or
15 on Twitter through any blog or website including Facebook,
16 Google, MySpace, LinkedIn or YouTube. You may not use any
17 similar technology of social media, even if I have not
18 specifically mentioned it here. I expect you to inform me as
19 soon as possible, as soon as you have become aware of another
20 juror's violation of these instructions.

21 And finally, a word to the alternate jurors; those of
22 you that have been selected as alternate jurors should listen
23 just as carefully and conscientiously to the other jurors. You
24 may very well be called upon prior to the conclusion of the
25 case to take the place of one of the jurors and then you will

Government's Opening Statement

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1 have to render a verdict. So please pay strict attention at
2 all times.

3 Okay, we're now going to hear opening statements.

4 The opening statement is going to be made by the
5 Assistant United States Attorney -- one of the Assistant United
6 States Attorney who's trying the case.

7 MS. SHIHATA: Thank you, your Honor.

8 This is a case about power and abuse. During this
9 trial, you'll learn that that man, the defendant, Carlos
10 Martinez, abused his position and power as an law enforcement
11 officer, a lieutenant at the Federal Bureau of Prisons, by
12 repeatedly raping a woman, a female inmate entrusted to his
13 care and custody.

14 You will also learn that the defendant is smart,
15 calculating and manipulative. He chose as his victim, a woman
16 who spoke little English, whose family was far away. Someone
17 isolated and vulnerable, facing immigration custody and
18 possible deportation after serving her sentence at a federal
19 prison here in Brooklyn.

20 This case is also about opportunity. You'll learn,
21 this woman worked a cleaner inside the prison, often cleaning
22 an area known as the lieutenant's office. That job assignment
23 provided the defendant with an opportunity which he seized,
24 using his power and position in the prison to get that woman
25 alone with him and rape her, over and over and over again.

Government's Opening Statement

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1 Good morning, ladies and gentlemen. My name is Nadia
2 Shihata, and I am an Assistant United States Attorney.

3 Here with me this morning is Assistant United States
4 Attorney, Nicole Argentieri, along with Laura Riley, a Special
5 Agent with the Department of Justice's Office of Inspector
6 General, Christine Doyle, a Special Agent with the Federal
7 Bureau of Investigation and Lauren Martin, a paralegal in our
8 office.

9 Together, it's our privilege to represent the United
10 States and to present the evidence against the defendant in
11 this case.

12 On a Sunday, in December, 2015, a woman, an inmate,
13 was summoned by the defendant to clean the lieutenant's office
14 on the second floor of the Metropolitan Detention Center, known
15 as the MDC. During this trial, you'll learn her real name but
16 we'll refer to her by a pseudonym, Maria, to protect her
17 privacy. Maria was in her late twenties and from the Dominican
18 Republic. She spoke Spanish, a language the defendant also
19 speaks. And she hadn't had a single visitor during her time at
20 the MDC.

21 By December of 2015, Maria had worked as a cleaner
22 for many months. But she had only recently started cleaning
23 for the defendant. And things got strange and uncomfortable
24 pretty quickly. At first, the defendant would simply ask Maria
25 how her week went as she went about her cleaning. Then he

Government's Opening Statement

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1 began calling her by her first name, which was unusual and
2 sharing personal information about himself. And then the
3 defendant, a boss at the prison, took things a step further,
4 making inappropriate sexual comments to Maria, asking her if
5 she masturbated and suggesting that the next time she took a
6 shower, she should think of him and touch herself.

7 After that happened, Maria tried to get another job
8 assignment but was told she couldn't. This was her job. So,
9 when the defendant called for her to clean, she had no choice,
10 she had to go. But even with these comments in the back of her
11 mind, Maria never expected what happened next. On that Sunday,
12 her life changed forever. An officer took her from her unit to
13 the second floor to clean, leaving her alone with the defendant
14 in the lieutenant's office. Once there, Maria prepared to
15 clean like always, while the defendant sat at his desk in the
16 office, she crouched down to gather and prepare some cleaning
17 liquids that were stored in an area behind that same desk.
18 Maria had her back towards the defendant. The defendant then
19 turned his chair towards her and when Maria turned to look his
20 way, what did she see? The defendant's erect penis exposed
21 through the zipper of his pants.

22 The defendant then grabbed Maria's head and forced
23 his penis inside her mouth. She struggled to push herself away
24 but wasn't able to. She felt like she was going to choke. The
25 defendant then lifted Maria up and pushed her face forward onto

Government's Opening Statement

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1 the desk, he pulled her pants and underwear down. Maria was
2 crying and begged him to use a condom. He didn't. He put his
3 penis inside her vagina from behind and raped her. When he was
4 finally finished, the defendant cleaned himself off and told
5 Maria she was bleeding.

6 The defendant ejaculated inside Maria. So on top of
7 everything else she had just been through, she was terrified
8 she'd get pregnant. She begged the defendant to get her the
9 Plan B pill, An emergency contraceptive that prevents a woman
10 from getting pregnant when taken shortly after unprotected sex.
11 The only thing that could have made what happened to her even
12 worse was to get pregnant inside a federal prison. But the
13 defendant told her to calm down, not to worry. She wouldn't
14 get pregnant because he had an operation, a vasectomy, which
15 meant he couldn't impregnate a woman. Maria wasn't convinced.
16 Nothing was foolproof and she was desperate for that pill,
17 pleading with the defendant to bring it to her even after he
18 told her she didn't need it.

19 Eventually, to calm Maria down, the defendant
20 relented and told her he would try to bring her the pill later
21 that night when was back on shift, around midnight. He called
22 for an officer to take Maria back to the unit but before she
23 left the defendant made sure to let Maria know there would be
24 consequences if she told anyone what happened. She would be
25 sent to what's known as the SHU, the special housing unit,

Government's Opening Statement

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1 solitary confinement and on top of that, she'd end up with more
2 jail time if anyone found out.

3 That's what the defendant, a lieutenant, with the
4 power and authority to discipline inmates like Maria. That's
5 what he told her. And not just that Sunday. You see, the
6 defendant didn't just rape and sexually abuse Maria that one
7 time. In the weeks that followed, he did it again and again
8 and again. Over and over and over. In the same location,
9 under the same guise of calling Maria down to clean.

10 Now, you may be wondering, how could the defendant
11 rape Maria in the middle of the day, multiple times, in an
12 office in a federal prison? There must have been other people
13 around. There must have been cameras in the facility. Well,
14 during this trial, you'll learn that at the times the defendant
15 chose to rape Maria, the lieutenant's office and surrounding
16 areas were basically empty. And you'll also learn that there
17 were no cameras inside the lieutenant's office, something the
18 defendant, as a supervisor in the prison, knew. But there were
19 cameras in other parts of the building. And you'll learn, that
20 the defendant had access to those cameras from the computer on
21 the desk in the lieutenant's office. So he could see and know
22 if anyone was coming while he sexually abused Maria. It was
23 his foolproof system. A system that also let Maria know that
24 the defendant could watch her, even when she wasn't with him.

25 For his conduct, the defendant is charged in a

Government's Opening Statement

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1 20-count indictment with crimes related to certain specific
2 incidents of his sexual abuse of Maria. Those crimes fall into
3 four categories.

4 First, depriving Maria of her civil rights,
5 specifically, her right as a prisoner to be free from cruel and
6 unusual punishment in the form of the defendant's aggravated
7 sexual abuse.

8 Second, the crime of aggravated sexual abuse for
9 using force to cause Maria to engage in various sexual acts
10 with him.

11 Third, the crime of sexual abuse for using threats
12 and fear to cause Maria to engage in those acts.

13 And fourth, the crime of sexual abuse of a ward for
14 engaging in sexual acts with Maria, who was in official
15 detention at the MDC and in the defendant's custody.

16 So how will we prove that the defendant committed
17 these crimes?

18 First, you'll hear from the victim herself. Maria
19 will take that witness stand and tell you what the defendant
20 did to her. She'll come into this courtroom and relive the
21 worst period of her life for you, telling you in explicit
22 detail how the defendant used force, threats, fear and his
23 position and power as a lieutenant to sexually abuse her,
24 repeatedly. It won't be easy for her. She'll tell you about
25 the humiliation and shame she felt afterwards, the fear she

Defendant's Opening Statement

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1 endured and the steps she took to try to make it stop,
2 including a call she made asking a friend to look the defendant
3 up on Facebook, hoping the defendant would monitor the call,
4 get worried his name was mentioned and finally stop the abuse.

5 And you'll learn the defendant did find out about
6 that call and did stop raping Maria for a period of time but
7 then he raped her again, one last time, in April of 2016 before
8 she was transferred to immigration custody.

9 You'll also hear from other women who were housed at
10 the MDC. Women who saw Maria after she returned to her unit
11 that Sunday in December, after the first time the defendant
12 raped her. They'll describe how she looked and acted in the
13 hours afterwards and how she confided to them some of what
14 happened at that time. How she was bleeding, crying, scared
15 and not her normal self the rest of that day and in the days
16 that followed.

17 You'll see medical records showing you that the
18 defendant had a vasectomy just like he told Maria. And you'll
19 hear from a doctor, an expert, who will explain to you what
20 that means. You'll hear from MDC officers and other witnesses
21 who will corroborate or backup aspects of Maria's testimony.
22 And you'll see prison records, phone records, Facebook records
23 and Google records that do the same.

24 And finally ladies and gentlemen, you'll see and hear
25 testimony about bank records and records from Rite Aid

Defendant's Opening Statement

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1 Pharmacy, proving that on that Sunday in December 2015, after
2 the first rape, when Maria begged the defendant for that Plan B
3 pill, just a few hours later, the defendant used his debit card
4 to purchase that Plan B pill at a Rite Aid, not far from his
5 house. He even used his Rite Aid rewards card to get a \$5
6 discount on it.

7 That's just a brief summary of some of the evidence
8 you'll see and hear in this case. And at the end of this case,
9 after you've seen and heard all the evidence, we'll have a
10 chance to speak to you again. And at that time, we'll ask you
11 to find the defendant guilty on all counts.

12 Thank you.

13 THE COURT: Mr. Ricco?

14 MR. RICCO: Good morning, your Honor. Good morning,
15 everyone. Good morning, ladies and gentlemen.

16 Yesterday we spent a whole day, all of us, with one
17 goal in mind. That goal was to pick 12 people from the
18 audience, who could fairly listen to a case of this magnitude
19 with these kind of charges.

20 It is difficult as human beings to hear what we just
21 heard and not have our faces express a deep concern about the
22 person who is the victim. Difficult.

23 We did our best in selecting you 12. Out of all the
24 people that we met with and all the persons that we asked, it
25 came down to you. My job this morning is to give you my view

Defendant's Opening Statement

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1 of what I think the evidence will show and then get out of the
2 way and let the evidence come in.

3 The government has the burden of proof here. And in
4 so doing they select the evidence that want to select. They do
5 it by way of witnesses, documents and arguments. It's their
6 burden. So they get to pick and choose. What I'm going to ask
7 you do as jurors is not pick and choose, that you listen to all
8 the evidence. So for some of the people who have already said,
9 "Boy, this guy's in trouble," I want you to back off that
10 thought and say, "Okay, I can handle it. I heard these very
11 serious charges."

12 But what is equally as serious is that we have a
13 system. In our rough and tumble society that we live in today,
14 we have one place where politics, and fairness and everything
15 goes out the window, and that's in here in the courtroom. And
16 all of us try our best to pick jurors that will honor that.

17 Now, in this case you've heard very serious
18 allegations, but a trial is the place that no matter how
19 serious the allegation is, each person, the individual who says
20 that they're a victim and the person who is charged with the
21 crime, is entitled under our laws to have their day in court.
22 To be given the dignity and respect of being listened to. And
23 then the community, you, the jurors, decide ultimately whether
24 or not the government has proven its case beyond a reasonable
25 doubt.

Defendant's Opening Statement

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1 Now, the government said that there are 20 counts
2 here, and of those 20 counts it's the government's belief their
3 obligation, so to speak, to prove the elements in every one of
4 those counts beyond a reasonable doubt. Of those 20 counts 15
5 of them will require you to find what you heard this morning,
6 not only that there was sexual contact, but there was force
7 and/or fear to compel a person to do something against their
8 will.

9 The presence of force, the presence of fear is a
10 repeated theme that you will hear throughout this trial and if
11 you pay very close attention you're going to find that it's not
12 the first time that Maria has used force and fear to accomplish
13 goals.

14 The government wants to prove -- will prove its case
15 through exhibits, debit cards, prison regulations and other
16 documents. And none of those things will prove that someone
17 did something by force and against their will. But the
18 government hopes to elevate this testimony to that area, is the
19 testimony of a person known to you as Maria and other women
20 that she was incarcerated with at the jail who were in a
21 similar situation. What you will learn from this case is that
22 they were together at the MDC and they were together in
23 immigration custody.

24 Now what you will hear in this case and what you're
25 going to find out about this case is that eloquent narrative

Defendant's Opening Statement

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1 that was given of repeated rapes over and over and over and
2 over and over again was not discussed or brought to anyone's
3 attention until after Maria was in immigration custody, was
4 about ready to be deported, excuse me, back to the country
5 where she came from.

6 What you're going to find in this case is that you
7 are going to have to find by reliable evidence this component
8 of force and fear. And in order to do that, you can't rush to
9 judgment, because if you rush to judgment you won't listen to
10 the details. Your mind would have been made up, you're set and
11 you're not paying attention. But in this case you've got to
12 pay attention to the details.

13 Now, the government said, I guess there's going to be
14 proof of it, that Lt. Martinez was intelligent, he was a
15 manipulator and a schemer. What you're going to find out in
16 this case is that when Maria takes the stand, she's going to
17 present herself as coy, sympathetic, a victim.

18 But from the evidence in this case when it all comes
19 out through her friends -- her friends -- through the women
20 served time with, you're going to find out that she's far from
21 that. You're going to find out that she's a convicted drug
22 mule, of committing a serious crime against our country. And
23 that she utilized the rules of this country to avoid the
24 serious consequences that went along with being convicted by a
25 plea.

Defendant's Opening Statement

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1 You're going to find that when it was time for
2 sentencing, that we have a society that embraces people who
3 have been victimized and we show them grace. And one of things
4 that you're going to become aware of is that Maria was aware of
5 that and she took advantage of something called safety valve.
6 And safety valves says if you're in a certain category, you
7 don't have to get that 10-year mandatory minimum.

8 And so Maria, you will hear, and her lawyer stood
9 before a United States District judge and presented herself in
10 the following way. That she came to the United States as a law
11 abiding citizen. That she had a cleaning business as a law
12 abiding citizen and then tragedy happened. You will learn from
13 her that she stood before a judge in order to gain that judge's
14 sympathy and said a tragedy took place, members of her family
15 died in a fire. And as a result of the dire circumstances she
16 got involved in a drug transaction to which she was only
17 supposed to get \$2,000.

18 You're going to hear describe by her lawyer as law
19 abiding, that it was a tragedy. And, Judge, we have pictures
20 and documents to prove it just like here. And she stood there
21 as the lawyer said those things knowing something different.
22 And when it came time for her to speak to the Court directly
23 you will find in this case, that she presented herself in
24 exactly that way, very sympathetic.

25 And the Judge, in her grace, believed it. And

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1 instead of her getting the 10 years she got 36 months. And
2 that's how she ended up at the MDC. But what you're going to
3 find in this case is that that was the story that got her the
4 36 months, but it wasn't the story that was going to keep her
5 in the country.

6 And what you're going to find from the government's
7 immigration records is that she applied for asylum. And you're
8 going to find that when she applied for asylum -- what were
9 those words again -- force and fear and emotional humiliation
10 that are written in her application for asylum. She swore
11 under perjury in her asylum application that when she came to
12 the United States she came here on account of drug trafficking.

13 You're going to find that when it was time for her to
14 stay in the country she was no longer the coy person. You're
15 going to hear her saying under oath that she got involved in
16 the drug business with her former partner, a guy named Dioberto
17 Torres (ph.), and it was Dioberto Torres after persistence and
18 persistence and persistence forced her against her will to get
19 involved in drugs. And she was afraid. And Dioberto used his
20 power over her to force her to take drug trips back and forth
21 from Ecuador. Back and forth into this country. Mind you when
22 she was in the Judge for the break she claims this was the
23 first time that it ever happened. Mind you when she was in
24 front of the Judge she said she was a law abiding person.

25 Her story changed because there's an exception to the

Defendant's Opening Statement

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1 immigration laws. You'll find from this case that immigration
2 law said if you came here through force, human trafficking or
3 drug trafficking and you face a threat to go home you can stay,
4 so the story changed. And what did she say, she said that the
5 Dioberto brutalized her over and over and over again. Her
6 words, she swore to it. She said she took multiple trips, that
7 she owed Dioberto hundreds of thousands of dollars. She said
8 Dioberto and his cronies burnt the family's house down. And
9 that if she goes back to the Dominican Republic, she will face
10 danger. And so when she's in front of the asylum board that's
11 the story she came up with. She did not tell the federal judge
12 any of that because she wouldn't have got a safety valve.

13 And in order to accomplish that, see lawyers have an
14 obligation when they're in front of the Court, so what does she
15 have to do? She ditched the lawyer that represented her in
16 federal court and got another lawyer to represent before the
17 asylum board because it would have been ethically impossible
18 for that lawyer to have done that, now -- which is true. In
19 this case it's going to be up to tell who is -- who is the true
20 person.

21 Now on top of that, you're going to hear that Maria
22 told asylum on her asylum application that she was so
23 devastated by the brutality of Dioberto Torres that took place
24 from 2009 until 2013, that when she went to jail she was so
25 depressed. You just heard that her attitude changes, all of

Defendant's Opening Statement

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1 sudden she just started crying. Well, what you're going to
2 find from the evidence here is that what she told the asylum --
3 on her asylum application, is that the reason why she was
4 crying and depressed and couldn't get out of bed is because she
5 was haunted by the fear that was instilled in her by Dioberto
6 Torres not Lt. Martinez.

7 Now, a couple of points and I'll be out of the way.
8 You heard the government say something about that Maria was
9 raped repeatedly and the government said it will be partially
10 corroborated by a telephone call and Facebook. What Maria did
11 not know was that that telephone call was overheard by the
12 security officers at the jail. And what the security officers
13 overheard was her saying the following to the guy who by this
14 point had repeatedly raped her several times. She got on the
15 phone, she called a friend of hers and said, "I want you to
16 Facebook Lt. Martinez." She didn't say Lt. Martinez, "I want
17 you to Facebook somebody." And in code she gave the initials
18 M.A. conversation R, conversation, she coded it out so it would
19 not be revealed. And she said, "I want you to go on Facebook
20 and find out if he's married. I want you to find out if he has
21 pictures with him and other women. And I want you to do
22 something before you friend him on Facebook, take me off of
23 your Facebook, take my pictures off, if you friend him."

24 The government says that that email corroborates
25 rape, of course. She was asked about that call by the security

Defendant's Opening Statement

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1 guards. The security officer heard the tone, heard the
2 conversation and asked her, "What were you doing? Do you like
3 him? You got thing for him?" "No."

4 I want to end everything right here. You're going to
5 hear about the prison rules. And there's one very important
6 prison rule, the government said the excuse for this was that
7 she didn't want to stay in jail longer. Nobody stays in jail
8 longer because that got raped. You're not kept in jail because
9 you got raped.

10 An inmate can lose good time credit, you're going to
11 find, out if they're involved in sexual contact with a person.
12 If they are involved in sexual contact, they lose what's called
13 good time credit.

14 Now, Maria is a person who has been to college, she's
15 both book smart and street smart. She's got an answer for
16 everything. And what I suggest to you in this case is listen,
17 because you know what happens when you listen to people long
18 enough they start telling on themselves. And at the end of the
19 day, jurors are going to have to find out if these excuses make
20 any sense.

21 Now, on of issue the MDC, you're going to hear
22 evidence in this case that you're going to find to be very
23 disturbing. There's a problem at the MDC. Maria is going to
24 tell you herself about sexual activity between a females and
25 staff. It shouldn't be happening. Somebody needs to stop it.

Defendant's Opening Statement

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1 You're going to hear evidence about it. She's going to tell
2 you about it. She's going to tell you that she was with woman,
3 standing there, as they're giving officers, you know, head, so
4 to speak. Sexual acts, she's going to tell you about it. And
5 most of the women are on the cleaning detail.

6 The government said, oh, it's unusual for somebody to
7 be using their first name. You're going to hear that the women
8 have nicknames for the staff, "Little Rooster, "Caballo", and
9 that's how they refer to each other.

10 Now, this becomes important because none of these
11 allegations of rape were reported to anyone until immigration
12 time. And of the women that were in immigration, two of them
13 had the same lawyer. And Maria no longer has the lawyer who
14 represented her falsely before a United States District Court
15 judge.

16 So pay very, very close attention to all this
17 evidence. I've said a little more than I wanted to say,
18 because I think it spoils it when the lawyers start talking
19 about what they think you are going to see but a case like this
20 needs to be brought right back to the center. Respect for the
21 person who says they were victimized and respect for the
22 process that says a man or a woman is presumed to be not guilty
23 no matter how difficult the charges may be. And, in fact, in a
24 case where the charges are very difficult where they cause our
25 brow to come together that's when we're put to our greatest

Defendant's Opening Statement

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1 test; to see whether or not we got that stuff inside of us that
2 make those principles that Judge Korman talked about come to
3 life. That is your job and responsibility here.

4 Lastly, this case is about prison life. Now, none of
5 you all have been to prison, so you're going to hear a little
6 bit about it. Prison life is not like regular life. The
7 government said the women who are will testify, they're going
8 to know details about the -- details about the guards. Well,
9 what you're going to learn here is that prison information is
10 like currency, the more information you have in jail the more
11 powerful you are. You're going to hear that there was
12 interaction between staff and inmates. Some of these women who
13 were involved in sex, planned to meet up with guards after they
14 left. You're going to hear they gave them phone numbers for
15 their kids to contact them and everything. It's going to turn
16 your head around. And it should. You're going to hear, I
17 think I said it before, they have nicknames and they pass the
18 information back and forth to one another vying for who is
19 going to give who.

20 You're going to be alarmed and deeply concerned and
21 you should be. What is disputed in this case is not that that
22 that kind of activity goes on at MDC. They're going to be
23 playing like I tell you about. Some people here today probably
24 know about it.

25 But what is disputed here is that Lt. Martinez on the

Defendant's Opening Statement

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1 toughest day of his life disputes that he raped and had
2 forcible sexual misconduct with anybody.

3 And the other charges against Mr. -- Lt. Martinez,
4 that don't require that, he disputes them. He took on a risky
5 job, a dangerous job. Now he's a defendant. And regardless if
6 his job was risky or dangerous is irrelevant. He like
7 everybody else is entitled to a beautiful concept that's hard
8 for us to get to, that he's innocent as he sits there today.
9 As hard as it is to look over here, having heard what you heard
10 what you heard and say he's an innocent man, our law says
11 that's how you should be looking at him if you're not.

12 So at this juncture I'm praying that we selected
13 individuals who will give Maria and her fellow inmates and her
14 friends their day in court. And that we give her all of the
15 respect that she's entitled to and allow her to explain it all
16 to you. This is what our system affords everybody. But I'm
17 equally praying, equally praying that each of you will give Lt.
18 Martinez his day in court.

19 And in order to accomplish that you don't have to do
20 much, you just have to show up and have a heart full of
21 patience and a mind full of wisdom and wait until all the
22 evidence in is in, and Judge Korman instructs you on the law,
23 then you begin the process.

24 So until that time come to court every day, bring
25 you're A-game, bring your best. Let's not let this process end

1 the way the process ended in front of Judge Swain, in the other
2 federal court. Let's make sure that manipulation, guile and
3 scheming fails and that your judgement in this case is based
4 upon accurate and reliable and responsible evidence.

5 Now, during jury selection somebody said I'm an
6 emotional person. Yeah, I'm an emotional person too. We're
7 all affected by these type of charges but we're all very
8 emotional over the idea of a person being convicted. And we
9 want to make sure if that unfortunate event happens, it is not
10 as a result of gamesmanship.

11 And by the way, I left out a point, while Maria was
12 at immigration, she filed a \$20 million lawsuit against the
13 Bureau of Prisons.

14 So I am honored to be a part of this process. This
15 is a tough case. I don't feel privileged, I feel more honored
16 than privileged, to work you through my view of the evidence in
17 a respectful, dignified, graceful way. It's my hope and prayer
18 that I'm able to accomplish that.

19 Thank you very much, ladies and gentlemen.

20 THE COURT: Well, ladies and gentlemen, it's already a quarter
21 to 12 now, and rather than start with the testimony of the
22 first witness and then interrupt it in 45 minutes I'd rather
23 take an early lunch and that way we can work without
24 substantial interruption.

25 There is a cafeteria in the building and also a

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1 concession stand on the first floor. If you don't mind, I
2 would like to ask you to take a little shorter lunch hour than
3 usual. Is a half hour too short? Everybody is shaking their
4 head no, so why don't we come back at a quarter to one?

5 THE CLERK: All rise.

6 (Jury exits the courtroom.)

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1 MS. SHIHATA: Judge, there's one --

2 THE COURT: Okay.

3 MS. SHIHATA: -- there's one matter I'd like to
4 address briefly.

5 THE COURT: Come up.

6 MS. SHIHATA: Judge, for Mr. Ricco's opening it
7 appears that he intends to elicit evidence regarding certain
8 other sexual -- an incident that occurred involving the victim
9 in this case at the MDC. We specifically filed a motion before
10 Judge Cogan, when this was before him, pursuant to Rule 412,
11 and we gave notice of that issue and what her -- what her
12 knowledge of and what happened to her with respect to the other
13 guard at the MDC. In footnote 11 of that motion we -- and we
14 did that so that if the defense wanted to oppose our motion
15 under Rule 12 that he had all the information necessary to do
16 so.

17 Judge Cogan ruled under 412, which is a very clear
18 rule of evidence in sexual assault cases, that testimony and
19 evidence regarding other sexual incidents involving the victim
20 are not permitted in evidence. It seems abundantly clear from
21 the opening that the defense plans to ask question about that.
22 And we would seek for your Honor to preclude that in accordance
23 with the ruling already made, which is the law of the case.

24 MR. RICCO: Judge, what may seem to be abundantly
25 clear is not what I was referring to. I read Judge Cogan's

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1 ruling and will abide by it without hesitation. I was
2 referring to an event where Maria was a witness to another
3 woman's sexual contact, which is in the 3500 --

4 MS. SHIHATA: Can I --

5 THE COURT: Let him finish.

6 MR. RICCO: -- and she is not involved in that sexual
7 incident. And it involved another woman who's involved in
8 sexual contact. And what your Honor heard me say is that,
9 which the jury will, that women on that unit were involved back
10 and forth with the guards. I was not referring to the incident
11 that the government is referring to, which involves another
12 officer whose name starts with -- the last name starts with a
13 P. I was not referring to that at all.

14 THE COURT: Were you -- or Maria's contact with
15 anyone else?

16 MR. RICCO: No, there is none.

17 THE COURT: Oh, okay.

18 MS. SHIHATA: May I respond, your Honor?

19 THE COURT: Sure.

20 MS. SHIHATA: Thank you. The problem is it's the
21 exact same incident, your Honor.

22 THE COURT: I can't hear you.

23 MS. SHIHATA: The problem is it's the same incident.
24 The incident with the other women who he's referring to, and is
25 made clear in our 3500 and in the motion in footnote, is that

1 she -- the victim in this case, that other guard first tried to
2 do something with her and first exposed himself --

3 THE COURT: And who's her? Who is her?

4 MS. SHIHATA: Our victim --

5 THE COURT: Yeah.

6 MS. SHIHATA: -- who will be testifying in this case,
7 she left the room -- he tried to put -- he tried to make the
8 victim, this other guard, put his -- her hand on this penis and
9 asked her to perform oral sex on him. She was able to leave
10 the room. Another woman went in and then she came -- and then
11 the victim in our case comes back in and that same guard has --
12 is getting oral sex performed by that other woman. It is all
13 part of the same story. It's not -- it's not like two
14 different things happened on two different days. It is
15 literally part of the same story.

16 MR. RICCO: Well, Judge, I would ask you to read the
17 3500 material. And I would suggest to the Court that you would
18 not come to the same conclusion. Let me finish. There were
19 two separate acts separated by them going to another and coming
20 back.

21 MS. SHIHATA: That's incorrect.

22 MR. RICCO: Okay. They were two separate acts. One
23 involving Maria. I did not discuss that incident in my
24 opening. My opening addressed the situation between that
25 officer and a woman named Yolanda, which --

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1 MS. SHIHATA: Your Honor, can we have a side-bar,
2 please.

3 THE COURT: Please let him finish.

4 MS. SHIHATA: Can we have a side-bar if he's going to
5 use the names of victims in another case, please?

6 THE COURT: Well, I don't --

7 MR. RICCO: Well, I --

8 MS. SHIHATA: We have a pending motion in another
9 case.

10 MR. RICCO: I'll refer to it by initials, and I think
11 it would be difficult for the Court to keep up with this,
12 because -- well, I'll try.

13 There were several incidents in this case, Judge, of
14 sexual contact between women who worked in the jail, consensual
15 contact and guards. Those were the incidents that I was
16 referring to. I was not referring to any incident where Maria
17 was a victim. And the situation involving a particular officer
18 and another woman whose initials -- one -- and another woman
19 was a situation where she witnessed conduct between women and
20 other guards. She was not involved. They are not incidences
21 where she was involved in the sexual contact.

22 THE COURT: And the relevance of that is?

23 MR. RICCO: That under the statute here the -- the
24 relevance of it is in this environment there was sexual contact
25 going on between -- there was sexual contact going on between

1 staff and inmates that helps explain how they have personal
2 information about them. How they refer to each other by first
3 names. And the relationship between staff in that Lieutenant's
4 room which is subject to this case and Officer -- Lt. Martinez.

5 And on one of the dates when this event happened
6 there was a conversation with Lt. Martinez around the same
7 time, but in a different room, but around the same time.

8 So the rule says you're not allowed to bring in prior
9 acts consensual or otherwise with a victim. The rule doesn't
10 say that we cannot bring in situations where the victim is a
11 witness to other people involved in sexual incidents.

12 THE COURT: I know, but what I -- I agree with you on
13 that point, but what I -- what's not clear is what precisely is
14 the relevance of that?

15 MR. RICCO: It will become relevant, Judge, because
16 what the government, even though they're making faces and
17 whatnot is this --

18 THE COURT: I'm only looking at you.

19 MR. RICCO: I could tell, Judge. Judge, is this, the
20 government says when Maria goes back to the unit the women are
21 shocked. They notice that she's upset, that she changed. And
22 they said that she continued to go back to clean because she
23 was forced to, she had to.

24 And what you're going to find from this case is that
25 the women who participated in the cleaning room, one of the

1 officers will testify, SIS officers will testify is that they
2 had plenty of women who wanted to work in this unit. And many
3 of these women, women in the unit were involved in consensual
4 contact with other officers.

5 THE COURT: And so what inference do you want the
6 jury to draw from that?

7 MR. RICCO: The inference that I want the jury to
8 draw from that is that as they evaluate the testimony of the
9 women, some of which were involved in these acts --

10 THE COURT: Who are going to testify here.

11 MR. RICCO: They're testifying here. One of them is
12 on the witness list. Another is on it -- in the 3500. All of
13 it is from the 3500, which is from the witnesses. I have no
14 knowledge of any of this other than what's in the 3500
15 material. These women will be testifying. And if their
16 testimony is to be believed and to be complete then the women
17 should be testifying about what is going on in this unit. In
18 the absence of that then the government's statement that
19 everybody is shocked that she was forced to do it, that nothing
20 happened, that no one could be trusted is not accurate.

21 THE COURT: So this deals with the government's
22 effort to show that everybody was shocked, to rebut that?

23 MR. RICCO: That's correct, your Honor.

24 THE COURT: Okay.

25 MS. SHIHATA: Judge, first of all, we are not going

1 to be presenting evidence that everybody was shocked, okay?

2 THE COURT: Well, everybody is a -- you know, it may
3 be overstatement, but you got his point.

4 MS. SHIHATA: But also this is entirely irrelevant.
5 This is not a case about putting the MDC on trial and what else
6 may be going on there. This is a case about the charges
7 against the defendant. Whether or not there were other things
8 going on at MDC does not go to the state of mind --

9 THE COURT: But he's -- Mr. Ricco in response to my
10 question about relevance and what it's designed to rebut is
11 fairly limited in terms of what he wants to rebut. And that is
12 testimony by other people that they were shocked to hear this.
13 And --

14 MS. SHIHATA: That's not what the testimony is going
15 to be. The testimony --

16 THE COURT: Well, if that's what the testimony is
17 going to be then we'll come back and discuss this.

18 MS. SHIHATA: All right. But I would just like to
19 explain. The shock is not that something is going on. What
20 the witnesses will testify about is about the demeanor of the
21 victim after this happened, how she had reacted to it. Not
22 that, you know, oh, this happened we must all be shocked about
23 it. That's not -- and I think when you hear the testimony you
24 will understand better.

25 THE COURT: This is why I don't like doing things in

1 advance of what I hear.

2 When would you propose to elicit it; though the first
3 -- through Maria?

4 MR. RICCO: Judge, I think that --

5 THE COURT: Do I have to hear her testimony first, is
6 what I am asking because --

7 MR. RICCO: I think that --

8 THE COURT: I told the jury back in a half hour and
9 we've already gone through 15 minutes of it.

10 MR. RICCO: -- some of it could be done through the
11 witnesses themselves, other than her. And I'll listen to the
12 testimony, Judge, if it's not appropriate I won't ask the
13 question.

14 THE COURT: Okay.

15 MR. RICCO: But it's certainly --

16 THE COURT: You'll come back -- I'm sorry to
17 interrupt you, before you decide that you want to ask the
18 question --

19 MR. RICCO: I'll give everybody a heads up.

20 THE COURT: -- we'll reconvene. Okay?

21 MS. SHIHATA: Yes, Judge.

22 THE COURT: Okay.

23 MR. RICCO: Thank you.

24 (Recess from 12:50 p.m. to 12:55 p.m.)

25 MS. ARGENTIERI: Judge, can we approach at sidebar?

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1 MS. SHIHATA: As soon as the defendant is here.

2 MS. ARGENTIERI: Nothing bad. I promise.

3 THE COURT: On this side.

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1 (Conference held at sidebar.)

2 MS. ARGENTIERI: Judge, since the witness isn't here
3 and the jury's not here, can we turn that off? Sorry.

4 THE COURT: Some white noise. It's torture.

5 MS. ARGENTIERI: Judge, upon reflection, I just
6 wanted to make sort of everyone aware of this road that we
7 could be going down. What Mr. Ricco has described as a
8 consensual contact between this other person that Maria
9 witnessed with the guard, is actually charged in an indictment
10 pending in this courthouse, not as a consensual act.

11 And you know, Judge, that inmates can't consent, and
12 even if -- so even if it were consensual, which this was not,
13 the person says they were in fear, it would be a crime.

14 And what I fear that is going to happen is if we get
15 into this testimony about how other people were having sexual
16 contact at the MDC --

17 THE COURT: Which, are we talking about the same
18 thing we left off, or is this --

19 MS. ARGENTIERI: Yes, the same thing that we left off
20 on.

21 THE COURT: Well, he said he's going to come back
22 when he's ready to ask the question, so --

23 MS. ARGENTIERI: That's fine.

24 THE COURT: You know, I told the jury a half hour.

25 MS. ARGENTIERI: I just want to put him on notice,

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1 and I just want to be aware --

2 MR. RICCO: You're not putting me on notice at
3 sidebar.

4 MS. ARGENTIERI: Just that it --

5 MR. RICCO: That's not on the record.

6 MS. SHIHATA: It is on the record.

7 MS. ARGENTIERI: Well, it is on the record.

8 THE COURT: It's on the record.

9 MR. RICCO: Oh, okay. But I'm not being put on
10 notice.

11 MS. ARGENTIERI: Well, I want to --

12 MR. RICCO: There's nothing to be put on notice for.

13 MS. ARGENTIERI: I just want everyone to be aware
14 that the government would then have to start putting the other
15 officer on trial and introducing evidence of that indictment,
16 the fact that they've been charged for it, and the fact that
17 the witness says it's not consensual. And I think it could
18 become for something that's not that relevant, a trial within a
19 trial. That's the only thing I --

20 MR. RICCO: This is not, this is not --

21 MS. ARGENTIERI: -- wanted to say.

22 MR. RICCO: All right. This is not going to
23 (inaudible).

24 MS. ARGENTIERI: Okay.

25 THE COURT: And when the time comes, you know, I

1 always dislike in limine rulings. Judge Cogan is a much
2 brighter judge than I am.

3 MS. ARGENTIERI: Oh, that's not true.

4 THE COURT: And he's, you know, he does it. The
5 reason I don't like them is because you make them before you
6 have any kind of sense about the trial --

7 MS. ARGENTIERI: Sure.

8 THE COURT: -- and what's going to happen. And so I
9 usually try to avoid them.

10 MR. RICCO: And, Judge, we --

11 THE COURT: At all costs.

12 MR. RICCO: And we also (indiscernible).

13 THE COURT: And he said he's going to give me notice
14 before he puts the question.

15 MR. RICCO: And, Judge --

16 THE COURT: And then I will have heard --

17 MS. ARGENTIERI: Okay.

18 THE COURT: -- testimony.

19 MR. RICCO: And, Judge, we also end up litigating
20 them before we even read the 3500 material. So we're just
21 throwing general principles out there.

22 THE COURT: No, no, I know. I'm not being critical
23 of it. You know, my -- I generally agree with you.

24 MS. ARGENTIERI: I just wanted to bring this because
25 Mr. Ricco kept referring to it as consensual, and it's actually

1 charged with the crime before Judge Matsumoto.

2 MR. RICCO: No, it's legally not --

3 MS. ARGENTIERI: No.

4 MS. SHIHATA: No, it's actually charged as sexual
5 abuse (indiscernible).

6 MR. RICCO: Why don't you let me finish what I have
7 to say before --

8 MS. SHIHATA: Because it's inaccurate.

9 MR. RICCO: If you want to do -- you can't do both
10 sides. It is legally, an inmate cannot consent. There are
11 events that took place here where the people are giving them
12 phone numbers, saying they want to get in touch with them
13 later. And if the government wants to say that that's -- that
14 they weren't -- that wasn't their frame of mind, whether or not
15 that constitutes a charge in another case, that's not before
16 this jury.

17 THE COURT: Okay. All right.

18 MS. ARGENTIERI: But it will be.

19 MS. SHIHATA: And also, what another inmate does with
20 another officer --

21 THE COURT: Look --

22 MS. SHIHATA: -- (indiscernible).

23 THE COURT: -- I want to start this witness, and he
24 said he would give me notice before he puts any of these
25 questions, and then we'll deal with it, preferably at the end

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1 of the day when I'm not keeping a jury cooped up.

2 MS. ARGENTIERI: Understood, Judge.

3 MS. SHIHATA: Thank you.

4 MS. ARGENTIERI: Thank you for hearing us. I
5 appreciate it.

6 (Conference concludes at sidebar at 12:59 p.m.)

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Direct - "Maria" - Shihata

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1 MS. ARGENTIERI: We're going to bring the witness
2 out.

3 (Pause.)

4 THE CLERK: We're waiting on one, Judge.

5 (Pause.)

6 (Jury enters the courtroom.)

7 THE CLERK: Ladies and gentlemen, please be seated.

8 (Pause.)

9 THE CLERK: Jurors are all present, Judge.

10 THE COURT: Ladies and gentlemen, first, let me
11 apologize to you. I know we said half hour for lunch and we've
12 taken 45 minutes. A legal issue came up that I had to resolve
13 outside of your presence. I can assure you that the lawyers
14 and I did not leave the courtroom until 12:30, which is a half
15 hour ago. I just didn't want you to think we're not sensitive
16 to the -- to what I told you in terms of time.

17 Would you raise your right hand?

18 (The witness is sworn.)

19 "M A R I A"

20 Having been called as a witness, having been first duly
21 sworn, was examined and testified as follows:

22 (Testimony through a Spanish interpreter.)

23 THE COURT: Ladies and gentlemen, as you may have
24 heard, this witness is going to be referred to by the pseudonym
25 Maria because of the nature of the offense and because this is

Direct - "Maria" - Shihata

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1 a public trial.

2 THE CLERK: The record should reflect that the
3 interpreters have been previously sworn and are still under
4 oath.

5 THE COURT: I didn't mean the nature of the offense,
6 I meant the privacy of her, of what she's going to say. It's
7 for you to decide whether any offense has been committed.

8 MS. SHIHATA: May I inquire, Your Honor?

9 THE COURT: Yes.

10 DIRECT EXAMINATION

11 BY MS. SHIHATA:

12 Q Good morning.

13 MS. SHIHATA: I'm showing the witness only what's
14 been marked as Government Exhibit 2.

15 BY MS. SHIHATA:

16 Q Do you recognize this photograph?

17 A Yes.

18 Q And who is this a photograph of?

19 A It's me.

20 MS. SHIHATA: I move to admit Government Exhibit 2.

21 MR. RICCO: Without objection.

22 THE COURT: It's admitted.

23 (Government's Exhibit No. 2 received into evidence.)

24 MS. SHIHATA: May I publish it?

25 THE COURT: If you think it's necessary to publish

Direct - "Maria" - Shihata

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1 every exhibit, go ahead.

2 MS. SHIHATA: I just mean on the screens for the
3 jury.

4 THE COURT: Oh, sure.

5 MS. SHIHATA: May I approach, Your Honor.

6 THE COURT: You could always approach without asking
7 me, so.

8 BY MS. SHIHATA:

9 Q I'm showing you what's been marked for identification as
10 Government Exhibit 2A. Do you recognize this?

11 A Yes.

12 Q And is this a photograph, the same photograph I just
13 showed you in Government 2, Exhibit 2, with your true name on
14 it?

15 A Yes.

16 MS. SHIHATA: I move to admit Government Exhibit 2A.

17 MR. RICCO: Without objection.

18 THE COURT: Admitted.

19 (Government's Exhibit No. 2A received into evidence.)

20 BY MS. SHIHATA:

21 Q Now, I'm just going to remind you that we're going to
22 refer to you by the name Maria during the course of your
23 testimony. Okay?

24 A Okay.

25 Q Maria, how old are you?

Direct - "Maria" - Shihata

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1 A Thirty-one.

2 Q And where were you born?

3 A In the Dominican Republic.

4 Q How far did you go in school?

5 A Two years of college.

6 Q Now, at some point in your life, did you spend time in a
7 federal prison?

8 A Yes.

9 Q Which prison?

10 A MCC MDC.

11 Q So two different prisons?

12 A Yes.

13 Q And you said, was the first one MCC?

14 A Yes.

15 Q Does that stand for Metropolitan Correctional Center?

16 A Yes.

17 Q And where is that located?

18 A In Manhattan.

19 Q And you said you also spent time at MDC. Is that correct?

20 A Yes.

21 Q Does that stand for Metropolitan Detention Center?

22 A Yes.

23 Q And where is that located?

24 A In Brooklyn.

25 Q Did something happen to you while you were housed at the

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1 MDC?

2 A Yes.

3 Q What happened?

4 A I was raped.

5 Q By who?

6 A Martinez. Lt. Martinez.

7 Q I know this is difficult, but do you see Lt. Martinez in
8 the courtroom here today?

9 A I can't.

10 Q Take a moment.

11 (Pause.)

12 MS. SHIHATA: I'm showing the witness only, what's
13 been marked for identification as Government Exhibit 1.

14 BY MS. SHIHATA:

15 Q Do you recognize this photograph?

16 A Yes.

17 Q Who do you recognize it to be?

18 A Martinez.

19 Q Is that the Martinez who raped you?

20 A Yes.

21 MS. SHIHATA: I'd move to admit Government Exhibit 1.

22 MR. RICCO: Without objection.

23 THE COURT: It's admitted.

24 (Government's Exhibit No. 1 received into evidence.)

25 MS. SHIHATA: May I publish it?

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1 THE COURT: Yes.

2 BY MS. SHIHATA:

3 Q Now you indicated you went to college. For how long?

4 A Two years.

5 Q And what did you study in college?

6 A Civil engineering.

7 Q And when did you move to the United States?

8 A In 2008.

9 Q How old were you at the time?

10 A Twenty, 21, 22.

11 Q And what area did you move to?

12 A New York.

13 Q Why did you come to the United States?

14 A To be with my boyfriend.

15 Q And did you come to the United States legally?

16 A Yes.

17 Q After you got to the United States, did you marry your
18 boyfriend?

19 A Yes.

20 Q Did you become a legal permanent resident?

21 A Yes.

22 Q Is that also known as having a green card?

23 A Yes.

24 Q Now after coming to the United States, did you work?

25 A Yes.

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1 Q Where did you work?

2 A At Western Union, supermarkets, I did housekeeping at the
3 Sheraton Hilton, and I cleaned offices.

4 Q And did you continue your education at all in the United
5 States?

6 A Yes.

7 Q What did you study?

8 A I was studying English so I could then study nursing.

9 Q And did you ever get beyond the studying English part?

10 A No.

11 Q Do you have any children?

12 A No.

13 Q Now after you moved to New York, were you, sometime after
14 that, were you contacted by a man you knew from the Dominican
15 Republic?

16 A Yes.

17 Q And what, if anything, did that man ask you to do?

18 A To pick up drugs.

19 Q From where?

20 A From here. Manhattan, 207th and Vermilyea.

21 Q And did you ultimately end up picking up drugs for this
22 man at some point?

23 A Yes.

24 Q How many times, approximately?

25 A Three or four times.

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1 Q Why did you do that?

2 A Because he threatened me. He would send people to my
3 house, in Santo Domingo, here, and I had to pay him some money
4 that he said I owed him.

5 Q How much money did he say you owed him?

6 A \$300,000.

7 Q And why did he say you owed him \$300,000?

8 A Because the first time he told me to go and pick up drugs
9 for him, I didn't, and those drugs got lost.

10 Q So he told you, you owed him for the lost drugs?

11 A Yes, because I hadn't gone to pick it up.

12 Q Now, were you scared of this man?

13 A Yes.

14 Q Are you still scared of him today?

15 A Yes.

16 Q I want to direct your attention to September 18th, 2013.

17 Did you go pick up drugs that day for this man?

18 A Yes.

19 Q And what happened that day?

20 A I was arrested.

21 Q Had you ever been arrested before?

22 A No.

23 Q And after your arrest, were you questioned by the agents
24 who arrested you?

25 A Yes.

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1 Q Was that the same day of your arrest?

2 A Yes.

3 Q Were you truthful with those agents?

4 A No.

5 Q Following your arrest, were you incarcerated?

6 A Yes.

7 Q Where?

8 A MCC.

9 Q That's the prison in Manhattan?

10 A Yes.

11 Q Are you familiar with the term, safety valve proffer?

12 A Yes.

13 Q What is your understanding of what a safety valve proffer
14 is?

15 A Well, you meet with prosecutors, the agents who arrested
16 you. You tell them about your involvement and that will bring
17 down -- you'll get less time for that.

18 Q And is there any condition to getting less time for
19 participating in a safety valve proffer?

20 A Yes.

21 Q What's the condition?

22 A Tell the truth.

23 Q Now in connection with your arrest, did you plead guilty?

24 A Yes.

25 Q And what did you plead guilty to?

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1 A Drug conspiracy.

2 Q And before your guilty plea, did you participate in a
3 safety valve proffer?

4 A Yes.

5 Q Were you completely truthful in your safety valve proffer?

6 A No.

7 Q What did you leave out?

8 A How many times I had gone and what Torres, what was going
9 on with Torres.

10 Q Who is Torres?

11 A The person who would tell me to go pick up the drugs.

12 Q The man we were talking about earlier?

13 A Yes.

14 Q And why did you leave out Torres in your safety valve
15 proffer?

16 A Because I couldn't. I didn't want to put my family any
17 more in danger.

18 Q Had anything happened to your family prior to that?

19 A Yes.

20 Q What had happened?

21 A My mom and dad's house burned down.

22 Q In the Dominican Republic?

23 A Yes.

24 Q Was anyone injured in that fire?

25 A Yes.

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1 Q Who?

2 A My mom, my two siblings, my little sister, and my nephew.
3 My family.

4 Q Did anyone die in that fire?

5 A Yes.

6 Q Who?

7 A My brother.

8 Q Did Torres ever talk to you about that fire?

9 A Yes.

10 Q And what did you understand from speaking to Torres after
11 that fire?

12 A That I had to -- well, I had to go up -- I had to go and
13 pick up those drugs to pay him.

14 THE COURT: Where did you go to pick up the drugs?

15 THE WITNESS: 131st, in Manhattan. Riverdale. Or
16 it's an avenue that runs along the river.

17 BY MS. SHIHATA:

18 Q Were all the locations where you picked up drugs, in the
19 New York area?

20 A Yes.

21 Q And what were you supposed to do with the drugs after you
22 picked them up?

23 A Give it to somebody else who was waiting for me.

24 Q Were you paid for doing that?

25 A No, just what was taken off the debt.

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1 Q And how much was taken off the debt each time?

2 A Two thousand bucks, \$2,000.

3 Q Now did you tell, in your safety valve proffer, did you
4 mention anything about threats, or did you tell -- strike that.

5 In your safety valve proffer, did you provide details to
6 the agents and prosecutors interviewing you about the threats,
7 the threats from Torres?

8 A No.

9 Q And did you say anything about who you thought was
10 responsible for the fire?

11 A No.

12 Q Why did you leave those things out?

13 A I couldn't. He was sending people to my house. I was in
14 jail. He was making calls to the lawyer who was handling my
15 criminal case.

16 Q And why didn't you mention that you had made more than one
17 drug pickup for Torres?

18 A For that same reason, and also because I didn't want to
19 serve more time in jail. I mean, I knew I was going to serve
20 time, but I didn't want to serve more.

21 Q Now, were you sentenced on January 29th, 2015?

22 A Yes.

23 Q And what sentence did you receive?

24 A Three years in jail and two years of probation.

25 Q Did you receive a benefit at your sentencing from the

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1 safety valve proffer?

2 A Yes.

3 Q What benefit did you receive?

4 A Two points that they took off, two points that I earned.

5 Q Two points from your sentencing guidelines?

6 A Yes.

7 Q And were you also facing a mandatory minimum sentence?

8 A Yes.

9 Q And were you sentenced below that mandatory minimum?

10 A Yes.

11 Q Do you recall what the mandatory minimum you were facing
12 was?

13 A Yes.

14 Q What was it?

15 A Ten years.

16 Q And that was based on the amount of drugs you were going
17 to pick up?

18 A Yes.

19 Q After your sentencing -- when you were sentenced, what
20 prison were you housed in at that time?

21 A In Manhattan at the MCC.

22 Q After your sentencing, were you transferred to another
23 prison at some point?

24 A Yes.

25 Q Which prison?

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1 A The MDC Brooklyn.

2 Q And when did you first arrive at the MDC?

3 A In March.

4 Q Of what year?

5 A 2015.

6 Q And when were you released from the MDC?

7 A April 29th of 2016.

8 Q And had you been in prison since your arrest?

9 A Yes.

10 Q When you were in prison, what was the most important thing
11 to you?

12 A To get out of there.

13 Q What do you mean by that?

14 A To not lose my good time.

15 Q What is good time?

16 A It's like when you behave yourself, when you don't get a
17 ticket, they give you your good time. Every six months, your
18 case manager meets with you and if you behaved well, they give
19 you your good time.

20 Q And you used the term, ticket. What did you mean by that?

21 A It's a ticket that you get in prison. It's like if you
22 have a problem. It's like if you are admonished about
23 something or if you get sent to the SHU.

24 Q So it's a form of discipline?

25 A Yes.

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1 Q When you were at the MDC, how many units for female
2 inmates were there at that time?

3 A Two.

4 Q And what were those units called?

5 A C South and C North.

6 Q So, are you saying that in Spanish or in English?

7 A (In Spanish), it's the same thing.

8 Q What floor were the units on?

9 A The sixth floor.

10 Q So I just, I'm worried that there was a problem with the
11 interpretation. Did you say Six North and Six South?

12 A Yes.

13 Q And generally speaking, what type of units were housed in
14 Unit Six North?

15 A The ones who had not been sentenced yet, who were waiting
16 for their sentence.

17 Q And what type of inmates were housed in Unit Six South?

18 A Those of us who had already been sentenced.

19 Q Which unit were you housed in?

20 A Six South.

21 Q And when you were previously housed at MCC, were you
22 what's known as a pretrial inmate?

23 A No.

24 Q You had not been -- for most of your time at MCC, had you
25 not been sentenced?

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1 A No.

2 Q Can you explain?

3 A You mean in Manhattan, right?

4 Q Yes, were you -- most of the time you were in Manhattan,
5 had you been sentenced yet?

6 A No, I hadn't.

7 Q And so was your court case still going on?

8 A Yes.

9 Q And as a result, did you see your lawyer regularly?

10 A Yes.

11 Q And did you appear for court appearances?

12 A Yes.

13 Q How, if at all, did that change after you were sentenced?

14 A Well, after that the lawyer doesn't see you anymore, and
15 you don't go back to court.

16 Q Now you testified that you were Housing Unit Six South at
17 the MDC. Is that right?

18 A Yes.

19 Q Can you describe for the jury, the layout of Unit Six
20 South?

21 A It was a big room, much bigger than this one. When you
22 came in the door, the beds, all of the beds were to the right.
23 And in front of -- in the front, there were the tables where
24 you ate. The bathrooms and the unit officer's office was to
25 the left, along with the kitchen.

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1 Q And were there beds in the unit?

2 A Yes.

3 Q And where were those?

4 A To the right.

5 MS. SHIHATA: I'm going to show the witness only a
6 series of photographs. Starting with 104; what's been marked
7 for identification as 104-A.

8 BY MS. SHIHATA:

9 Q Do you see the photograph?

10 A Yes.

11 Q Now showing you what's been marked for identification as
12 104B. Do you see that?

13 A Yes.

14 Q I'm showing you 104-C. Do you see that?

15 A Yes.

16 Q Now showing you 104-D. Do you see that?

17 A Yes.

18 Q And I'm showing you 104-E. Did you recognize the series
19 of photos I just showed you?

20 A Yes.

21 Q And what are those photos of?

22 A Of Unit -- Unit C.

23 Q Sorry, which unit?

24 A C South. Six South.

25 Q And that's the unit you were housed in?

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1 A Yes.

2 Q At the MDC?

3 A Yes.

4 MS. SHIHATA: I move to admit Government's Exhibits
5 104A through E.

6 MR. RICCO: Without objection, Your Honor.

7 THE COURT: They're admitted.

8 (Government's Exhibit Nos. 104A through 104E received into
9 evidence.)

10 MS. SHIHATA: I'd like to publish to the jury.

11 BY MS. SHIHATA:

12 Q I'm showing you what's in evidence as Government Exhibit
13 104C. Could you please describe what this is?

14 A This is the dining area where we ate, and the telephones,
15 the computers, the office, and the kitchen.

16 Q Okay. And do you see where I'm pointing to a door in the
17 middle of the photograph?

18 A Yes.

19 Q What is that?

20 A That's the entry door to the unit.

21 Q And I'm pointing to another door on the right of the
22 photograph, next to -- well, do you see where I'm pointing?

23 A Yes.

24 Q And what is the area I'm pointing at?

25 A That is the unit officer's office.

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1 Q And I'm pointing to a series of -- I'm pointing to items
2 on the other side of the picture, on the left side. What is
3 that?

4 A The telephones.

5 Q I'm showing you what's in evidence as Government Exhibit
6 104-E. What is this a picture of?

7 A It's the counselor's office and the unit officer's office,
8 and the cooler for the ice.

9 Q And is this, where I'm pointing, is this door the unit
10 office?

11 A Yes.

12 Q And just to be clear for the record, is that the door to
13 the right of the ice machine?

14 A Yes.

15 Q I'm now showing you what's in evidence as Government
16 Exhibit 104A and Government Exhibit 104-B. What are Government
17 Exhibits 104-A and B of?

18 A They're photos of the unit. The part where the beds are.

19 Q And is this the -- are these the beds where inmates slept?

20 A Yes.

21 Q Is there any difference in how these beds appear in this
22 photograph from when you were there?

23 A Yes.

24 Q What's the difference?

25 A They're empty.

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1 Q Now showing you what's in evidence as Government Exhibit
2 104-D. What is this?

3 A The bathrooms.

4 Q The bathrooms in your unit?

5 A Yes.

6 Q Now was Unit 6 South where you spent most of your time as
7 an inmate in the MDC?

8 A Yes.

9 Q And did you have much privacy in Unit 6 South?

10 A No, there's no privacy.

11 Q And can you explain what you mean by that?

12 A Well, I don't really know how to explain it, but
13 everything is open. Just like it is in here, it's open.

14 Q Now, who were the people that were in charge of you when
15 you were at the MDC?

16 A The unit officer and the lieutenants.

17 Q And were there rules that you had to follow as an inmate
18 at the MDC?

19 A Yes.

20 Q What kind of rules?

21 A To like to have your uniform, to work. A lot of things.

22 Q Were there times where you had to be at your bed?

23 A Yes.

24 Q And were there times that you had to be at work?

25 A There, you worked when you were told to work.

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1 Q And if an inmate didn't follow the rules at the MDC, what
2 would happen?

3 A She would get a ticket or she would be sent to the SHU.

4 Q Inmates in general, you mean?

5 A Yes.

6 Q And were there other types of punishments as well?

7 A You could lose your computer privileges, your telephone
8 privileges, your visits, your commissary.

9 Q You mentioned telephone privileges. What type of
10 telephone privileges did you have as an inmate?

11 A Three hundred minutes a month.

12 Q And did you have to pay for those minutes?

13 A Yes.

14 Q And how did it work when you wanted to make a phone call?

15 A You'd pick up your phone, the phone, you'd put in your
16 inmate number, you'd say your name, and you'd dial the number.

17 Q And did the phone numbers you dialed have to be on a list?

18 A Yes.

19 Q Are you familiar with the term, the terms, recall and
20 count?

21 A Yes.

22 Q What is recall?

23 A That's a half hour before the count, and you have to be
24 behind the line. It's in the area where the beds are.

25 Q I'm showing you Government Exhibit 104-A again. Are the

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1 lines you just referred to in this photograph?

2 A Yes.

3 Q Which line?

4 A The blue line.

5 Q And so which of these -- there's a number of blue lines on
6 this photograph, correct?

7 A Yes.

8 Q Which blue line did you have to be behind at recall?

9 A The first one. The first blue line.

10 Q This one here?

11 A Yes.

12 Q And what is the count?

13 A The officer and another officer, or a lieutenant, count
14 all the inmates.

15 Q And how many times a day did the count happen?

16 A One time, Monday to Friday, and twice on Saturdays and
17 Sundays.

18 Q Now, what were you permitted to wear as an inmate at the
19 MDC?

20 A A uniform.

21 Q And what did the uniform look like when you were there?

22 A Pants, gray ones. Well, beige. And a blouse.

23 Q So it was separate pants and shirt?

24 A Yes.

25 Q And were there times that you could wear something other

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1 than your uniform at MDC?

2 A Yes.

3 Q What else could you wear?

4 A Sweat pants and a small t-shirt.

5 Q And when were you permitted to wear sweats?

6 A After 5:00, Monday to Friday, and then the whole day on
7 Saturdays and Sundays.

8 Q Where did inmates change clothes at Unit 6 South?

9 A At their beds. Some did it in the bathroom.

10 Q And where did you change clothes?

11 A In the bathroom.

12 Q Why?

13 A Because I didn't like to be seen, you know. If you
14 changed clothes outside, everybody could see you.

15 Q Now, as a sentenced prisoner at the MDC, were you required
16 to work?

17 A Yes.

18 Q And what job or jobs did you first have when you got
19 there?

20 A Laundry, but the laundry for the inmates, those of us who
21 were there. The kitchen, and then the cleaning the second
22 floor.

23 Q Okay. So you mentioned the laundry for the unit. Is that
24 right?

25 A Yes.

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1 Q And then you mentioned the kitchen. Was that the unit
2 kitchen?

3 A Yes.

4 Q And then cleaning?

5 A Yes.

6 Q And once you started to work in cleaning, what area of the
7 MDC did you clean?

8 A The second floor.

9 Q And that's the second floor of the same building you were
10 housed in?

11 A Yes.

12 Q Now at some point did you start cleaning the second floor
13 regularly?

14 A Yes.

15 Q Around when was that?

16 A In around -- well, it was almost right after I got there.
17 May.

18 Q Of what year?

19 A 2016, 2015.

20 Q 2015?

21 A Yes, 2015.

22 Q And how often did you clean the second floor?

23 A Whenever I would get called to do it. I would go. I had
24 to go.

25 Q How often would you get called?

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1 A Sometimes every day. Four, five times a week. Or three
2 times. It would depend.

3 Q And what specific areas of the second floor did you clean?

4 A The second floor, well, like the medical area, the area of
5 the legal department, the lieutenant's area.

6 Q And what specific types of cleaning did you do?

7 A I dusted, I swept, I mopped, I took out the trash,
8 cleaning.

9 Q When you first started cleaning the second floor
10 regularly, did you generally do so alone, or with others?

11 A No, with other people.

12 Q Who did you clean with?

13 A With Odie de la Cruz, and Carmen Lopez.

14 Q And did Carmen Lopez leave the MDC while you were there?

15 A Yes.

16 Q Around when?

17 A November 1st.

18 Q Of what year?

19 A 2015.

20 MS. SHIHATA: Showing the witness only what's been
21 marked for identification as Government Exhibit 8.

22 BY MS. SHIHATA:

23 Q Do you recognize this photograph?

24 A Yes.

25 Q Who is this?

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1 A Odie de la Cruz.

2 MS. SHIHATA: I move to admit Government Exhibit 8.

3 MR. RICCO: Without objection, Your Honor.

4 THE COURT: It's admitted.

5 (Government's Exhibit No. 8 admitted into evidence.)

6 MS. SHIHATA: May I publish it to the jury?

7 THE COURT: Yes.

8 BY MS. SHIHATA:

9 Q And was Odis de la Cruz one of the inmates you cleaned the
10 second floor with?

11 A Yes.

12 Q And was she at the MDC already when you first arrived
13 there?

14 A Yes.

15 Q And when you left the MDC, was she still there?

16 A Yes.

17 Q Now after Carmen Lopez left the MDC, were there times when
18 Odis de la Cruz did not clean the second floor with you?

19 A Yes.

20 Q And in what circumstances was Odis de la Cruz able to not
21 have to clean with you?

22 A Only when she had a visit.

23 Q As a general matter, how did you learn when you were
24 needed to clean the second floor on a particular day?

25 A The unit officer would call out over the loud speaker, by

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1 last name. Then you'd have to go to the office, and he would
2 tell you, get yourself ready, they're going to come and pick
3 you up so you can go down to clean.

4 Q And what, if anything, did you have to do to get ready?

5 A Put on your uniform if you weren't already wearing it.
6 Put your sneakers on. Get a towel, maybe. Mop. And the
7 bucket to mop with.

8 Q And how did you get to the second floor?

9 A Another officer would come and he would take us.

10 Q And would you go down by elevator?

11 A Yes.

12 MS. SHIHATA: Showing the witness only what's been
13 marked for identification as Government Exhibit 101A.

14 BY MS. SHIHATA:

15 Q Do you recognize this?

16 A Yes.

17 Q What do you recognize this to be?

18 A The elevators on the second floor.

19 MS. SHIHATA: I move to admit Government Exhibit
20 101A.

21 MR. RICCO: Without objection, Your Honor.

22 THE COURT: Admitted.

23 (Government Exhibit No. 101-A received into evidence.)

24 MS. SHIHATA: May we publish it to the jury?

25 THE COURT: Yes.

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1 BY MS. SHIHATA:

2 Q Now, looking at Government Exhibit 101A, the door in the
3 middle of the photograph that I'm pointing to, what is that?

4 A It's the door that control has to open in order to go into
5 where you had to go clean, back there.

6 MS. SHIHATA: Showing the witness only Government
7 Exhibit 101B.

8 BY MS. SHIHATA:

9 Q Do you recognize this photograph?

10 A Yes.

11 Q What is this?

12 A The same door, closer up.

13 MS. SHIHATA: I'd move to admit Government Exhibit
14 101B.

15 MR. RICCO: No objection.

16 THE COURT: It's admitted.

17 (Government's Exhibit No. 101-B received into evidence.)

18 BY MS. SHIHATA:

19 Q Now, on Government Exhibit 101-B, do you see a black
20 square next to the door?

21 A Yes.

22 Q What is that?

23 A That's the button that the officer who would bring us down
24 would have to press to call control.

25 MS. SHIHATA: Showing the witness only what's been

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1 marked for identification as Government Exhibits 101-C and 101-
2 D.

3 BY MS. SHIHATA:

4 Q Do you recognize these two photographs?

5 A Yes.

6 Q What is 101C?

7 A The hallway of the second floor after the door.

8 Q And what is 101D?

9 A The same hallway, but closer up.

10 MS. SHIHATA: I move to admit 101-C and 101-D.

11 MR. RICCO: Without objection, Your Honor.

12 THE COURT: They're admitted.

13 (Government's Exhibit Nos. 101-C and 101-D received into
14 evidence.)

15 MS. SHIHATA: Publishing 101C.

16 BY MS. SHIHATA:

17 Q After going through the door depicted in this photograph,
18 what is after the door in that hallway?

19 A The entrances to all of the offices you have to clean,
20 like the entrance to the clinic, where the dentist is. That's
21 all you can see. Nothing else.

22 Q Showing you what's in evidence as 101D. What are the --
23 do you see -- is this the hallway with the various offices you
24 referred to?

25 A Yes.

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1 Q Okay. And you have a screen in front of you. Can you
2 point out on the screen, and you can make a mark on the screen
3 with your finger. Can you point out what each of the doors are
4 and make a mark while you're doing so?

5 A This is the door to where the lieutenants, the chaplain,
6 the captain are. This one.

7 Q So, before you move on, you were talking about the first
8 door on the left?

9 A Yes.

10 Q And what are the other doors?

11 A That's the door where the water is, that's where you would
12 change your water, and that's where the sink is.

13 Q The middle door?

14 A Yes.

15 Q And what about the third door?

16 A That's where you would go to see the general doctor, and
17 there's also like, a small waiting room there.

18 MS. SHIHATA: Now I'd like to show the witness only a
19 series of photographs marked as Government Exhibits 102-A, 102-
20 B -- 102-A and 102-B, starting with 102-A.

21 BY MS. SHIHATA:

22 Q Do you recognize what's in this photograph?

23 A Yes.

24 Q And what do you recognize this photograph to be?

25 A It's like the waiting area where you would like wait to go

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1 into the chaplain's office, the lieutenant's office, the
2 captain's office.

3 Q And do you see an office --

4 MS. SHIHATA: Well, I move to admit 102A.

5 MR. RICCO: Without objection.

6 THE COURT: It's admitted.

7 (Government's Exhibit No. 102-A received into evidence.)

8 MS. SHIHATA: May we publish it to the jury?

9 THE COURT: Yes.

10 BY MS. SHIHATA:

11 Q And do you see the door I'm pointing to in this area, in
12 the middle of the photograph?

13 A Yes.

14 Q What is that the entrance to?

15 A It's the door to the lieutenant's office.

16 Q And I'm showing you what's been marked for --

17 MS. SHIHATA: The witness only, what's been marked
18 for identification as 102-B.

19 BY MS. SHIHATA:

20 Q Is this a photograph of that same waiting area in a --
21 from a different angle?

22 A Yes.

23 MS. SHIHATA: I move to admit 102-B.

24 MR. RICCO: Without objection, Your Honor.

25 THE COURT: It's admitted.

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1 (Government's Exhibit No. 102-B received into evidence.)

2 BY MS. SHIHATA:

3 Q The door I'm pointing to, with what looks like an exit
4 sign on top of it, what is that?

5 A It is the exit of the -- of like the waiting area.

6 Q And is that also how you come in?

7 A Yes.

8 Q And the two doors that are at the sofa is between, what
9 are those?

10 A The bathrooms.

11 MS. SHIHATA: Showing the witness only what's been
12 marked for identification as Government Exhibit 102-D.

13 BY MS. SHIHATA:

14 Q Do you recognize this photo?

15 A Yes.

16 Q What is this a photo of?

17 A It's the entrance to the chaplain's office, the Father's
18 office. And the door to the lieutenant's office.

19 MS. SHIHATA: I move to admit 102-D.

20 MR. RICCO: Without objection.

21 THE COURT: Admitted.

22 (Government's Exhibit No. 102-D received into evidence.)

23 BY MS. SHIHATA:

24 Q Now, can you just explain which is which door?

25 A This is the chaplain's office, and this is the

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1 lieutenant's office.

2 Q And just for the record, when you were describing the
3 first door, you made a mark on the door to the left of the
4 exhibit. Is that right?

5 A Yes.

6 Q And the door pictured on the right, that's the entrance to
7 the lieutenant's office?

8 A Yes.

9 Q Have you been inside the lieutenant's office?

10 A Yes.

11 Q And can someone in the chaplain's office see what's going
12 on in the lieutenant's office?

13 A No, because once you go in there, there are three smaller
14 offices toward the back.

15 Q Once you go in where?

16 A After you open this door.

17 Q The door to the chaplain's office?

18 A Yes.

19 Q And is there any window from the chaplain's office into
20 the lieutenant's office?

21 A No.

22 Q Now you testified that you were -- you would be escorted
23 by an officer to the second floor when you would go clean. Is
24 that right?

25 A Yes.

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1 Q And did the officer who escorted you, did they stay with
2 you while you were cleaning, or leave?

3 A They would leave.

4 Q Would they always leave, or would they sometimes stay?

5 A They would leave. It was Smith who would stay.

6 Q Who is Smith?

7 A Another officer.

8 MS. SHIHATA: Showing you -- showing the witness only
9 what's been marked for identification as Government Exhibit 3.
10 BY MS. SHIHATA:

11 Q Do you recognize this photograph?

12 A Yes.

13 Q And who is this a photograph of?

14 A Officer Smith.

15 MS. SHIHATA: I move to admit Government Exhibit 3.

16 MR. RICCO: Without objection.

17 THE COURT: It's admitted.

18 (Government's Exhibit No. 3 received into evidence.)

19 BY MS. SHIHATA:

20 Q And was Officer Smith one of the officers who sometimes
21 escorted you to the second floor?

22 A Yes.

23 Q And were there other officers who also escorted you to the
24 second floor?

25 A Yes.

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1 Q The other -- the officers other than Smith, did they stay
2 with you while you cleaned or did they leave?

3 A No. As soon as they turned us over, they would leave.

4 Q And who did they turn you over to?

5 A Over to the lieutenants who had called for someone or
6 whoever had called for someone, a doctor.

7 Q So depending on who had called for an inmate to come
8 clean?

9 A Yes.

10 Q Now you mentioned that sometimes the person that called
11 for you to clean would be a lieutenant, is that right?

12 A Yes, most of the time.

13 Q And who were some of the lieutenants you cleaned for at
14 the MDC?

15 A Lt. Rodriguez, Lt. Almos, Perez, but not that often. Very
16 little. A black lieutenant, a female, but I don't know her
17 name. And Lt. Martinez and Maldonado.

18 Q Showing the witness only what's been marked as Government
19 Exhibit 9, do you recognize this person?

20 A Yes.

21 Q And who do you recognize in the photo?

22 A Lt. Rodriguez.

23 MS. SHIHATA: I move to admit Government Exhibit 9.

24 MR. RICCO: Without objection.

25 THE COURT: Admitted.

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1 (Government Exhibit No. 9 received in evidence.)

2 BY MS. SHIHATA:

3 Q Now was this -- was Rodriguez one of the lieutenants you
4 cleaned for at the MDC at some point?

5 A Yes.

6 Q And at some time after you cleaned for Rodriguez, did you
7 learn that he became an officer in a department called SIS?

8 A Yes.

9 Q And what is your understanding of what SIS is?

10 A Those who investigate the prison.

11 Q What do you mean by that?

12 A Like the ones who investigate problems.

13 Q With inmates?

14 A With prisoners, yes.

15 Q I'm showing you what's in evidence as Government Exhibit 1
16 again, did you also clean for Lt. Martinez?

17 A Yes.

18 Q Now how did you first meet Lt. Martinez?

19 A In the lieutenant's office, mopping.

20 Q And who were you cleaning for that day?

21 A For Lt. Almos.

22 Q And did you hear Lt. -- well, strike that.

23 Who was in the lieutenant's office while you were mopping?

24 A Lt. Almos and Lt. Martinez.

25 Q And what if anything did you hear the defendant say to Lt.

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1 Almos?

2 A He asked him if he could -- he asked him if he could send
3 for me if he needed me.

4 Q Who asked who that?

5 A Lt. Martinez asked Lt. Almos "Could I send for her if I
6 needed her to clean for me"?

7 Q What happened next?

8 A Almos said, "Yeah, of course."

9 Q And sometime after that did you start cleaning the second
10 floor for Lt. Martinez?

11 A Yes.

12 Q Around when was that?

13 A It was like September of 2015. September-October, I don't
14 remember.

15 Q Of what year?

16 A 2015.

17 Q And when you first started cleaning for Lt. Martinez, what
18 areas did he generally want you to clean?

19 A What areas he wanted?

20 Q Yes. What areas on the second floor when you first
21 started cleaning for him?

22 A The office, the bathrooms.

23 Q And when you say the office, are you referring to the
24 lieutenant's office?

25 A Yes.

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1 Q And what days of the week did Lt. Martinez generally send
2 for you to clean for him?

3 A Friday, Saturday and Sunday.

4 Q Starting with Fridays, around what time would you
5 generally clean for him on Fridays?

6 A Like after 4:30 or 5:00.

7 Q In the afternoon?

8 A Yes.

9 Q And how about on Saturdays and Sundays?

10 A Like 11:00, 12:00, 1:00, it depended.

11 Q Now can you describe for the jury what the second floor
12 was like on Fridays after 4:00 or 5:00 p.m.?

13 A Empty. There'd just be the person -- well, the lieutenant
14 and then the person who would take us down. The other people,
15 the doctors, they didn't work after 5:00 or on the weekend.

16 Q And was that different than on other days of the week?

17 A Yes.

18 Q And just to be clear, on weekends, what was -- what was
19 the second floor like when you would go clean on weekends?

20 A Empty.

21 Q Now when you first started to clean for Lt. Martinez,
22 where would the officer who escorted you generally take you?

23 A He'd go in. He'd go in to the unit to the lieutenant's
24 office and he'd say "Here they are," and then he would go.

25 Q So he would take you to the lieutenant's office?

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1 A Yes.

2 Q And then leave?

3 A Yes.

4 Q Showing the witness only what's been marked for
5 identification as Government Exhibit 103A and 103B, do you
6 recognize Exhibits 103A and B?

7 A Yes.

8 Q And what are 103A and B photographs of?

9 A The office, inside.

10 Q Which office?

11 A The lieutenant's office.

12 MS. SHIHATA: I move to admit Government's Exhibit
13 103A and B.

14 MR. RICCO: Without objection, Your Honor.

15 MS. SHIHATA: We're first publishing 103A.

16 THE COURT: That's admitted? You said without
17 objection?

18 MR. RICCO: Yes, Your Honor. I'm sorry.

19 THE COURT: Oh, I misheard you. I thought you said
20 objection.

21 MR. RICCO: No. No, Your Honor.

22 THE COURT: Okay. They're admitted.

23 MS. SHIHATA: And 103B

24 (Government Exhibits Nos. 103A and 103B received in evidence.)

25 BY MS. SHIHATA:

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1 Q Now looking at 103B, can you describe what's in this
2 photograph?

3 A Half of the desk. Half of the lieutenant's desk. The
4 cabinets. The cabinets. And the other desk where the officer
5 could stay if he wanted to.

6 Q And the lieutenant's desk, is that the lighter colored
7 desk in the photograph?

8 A Yes.

9 Q Showing the witness only what's been marked for
10 identification as Government Exhibit 103C, do you recognize
11 this photo?

12 A Yes.

13 Q What is it a photo of?

14 A The lieutenant's desk.

15 MS. SHIHATA: I move to admit Government Exhibit
16 103C.

17 MR. RICCO: Without objection, Your Honor.

18 THE COURT: It's admitted.

19 (Government Exhibit No. 103C received into evidence.)

20 BY MR. SHIHATA:

21 Q And I'm showing the witness only what's been marked for
22 identification as Government Exhibit 103D. Do you recognize
23 this photo?

24 A Yes.

25 Q And what is this a photo of?

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1 A The lieutenant's chair.

2 Q And is that behind the lieutenant's desk?

3 A Yes.

4 MS. SHIHATA: I move to admit Government Exhibit
5 103D.

6 MR. RICCO: Without objection, Your Honor.

7 THE COURT: It's admitted.

8 (Government Exhibit No. 103D received into evidence.)

9 BY MS. SHIHATA:

10 Q Now was there any particular area in the lieutenant's
11 office where cleaning supplies were kept?

12 A Yes.

13 Q And what area is that?

14 A In a cabinet. In the middle cabinet.

15 Q I'm showing you what's in evidence as Government's Exhibit
16 103B again, do you see those cabinets in this photo?

17 A Yes.

18 Q Can you point them out? So that's the middle cabinet you
19 were referring to?

20 A Yes.

21 Q And I'm showing the witness only what's been marked as
22 Government Exhibit 103E, do you recognize this photo?

23 A Yes.

24 Q What is this a photo of?

25 A The same cabinet, open.

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1 MS. SHIHATA: I move to admit Government Exhibit
2 103E.

3 MR. RICCO: Without objection, Your Honor.

4 THE COURT: It's admitted.

5 (Government Exhibit No. 103E received into evidence.)

6 BY MS. SHIHATA:

7 Q So this middle cabinet you would get cleaning supplies?

8 A Yes.

9 Q Now at some point, did you learn that some of the cleaning
10 supplies had been moved to a different area in the office?

11 A Yes.

12 Q And did you learn where those supplies had been moved?

13 A Yes.

14 Q Where had they been moved? Just describe it.

15 A Like to the side. So there's the lieutenant's desk, over
16 on the left. Well, the desk was like this. It was kind of in
17 the desk.

18 Q Okay. I'm going to show you some photographs. Okay? I'm
19 showing you what's in evidence as 103D, do you see the area
20 that you were just trying to describe in this photograph?

21 A Yes.

22 Q Can you explain where it is?

23 A Here. Down here.

24 Q Okay. And for the record, you've made a mark on the
25 photograph in an area below where the printer is, is that

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1 correct?

2 A Yes.

3 Q And do you know who moved or who put certain cleaning
4 supplies there?

5 A The female lieutenant, the one I was just talking about.
6 The black woman.

7 Q So a black female lieutenant whose name you don't know?

8 A No, I don't. She was the one who would put them there
9 because she -- she didn't want to use up the spray stuff. I
10 don't know. She said she bought that, you know, the sprays
11 that you had to spray. She said she used her own money to buy
12 that.

13 Q Okay. So this lieutenant whose name you don't remember
14 kept the supplies in that -- certain supplies in that area, is
15 that correct?

16 A Yes.

17 Q Now when you first started to clean for Lt. Martinez,
18 what, if anything did he say to you after you were escorted to
19 the lieutenant's office?

20 A I'd get there. I'd knock. He'd say hi. How was your
21 week. I'd say good.

22 Q And what language did he speak to you in?

23 A In Spanish.

24 Q Now when you first started cleaning for Lt. Martinez, was
25 he nice to you?

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1 A Yes.

2 Q And did he tell you things about himself?

3 A Yes.

4 Q What kind of things did he tell you?

5 A That he had three daughters. One who was almost my age
6 back then who had a son. Two, one who was 11 or 12. I don't
7 know. That -- and so the mother of those two girls, his ex,
8 was a police officer at a clinic or something. I don't know.
9 He lived about ten minutes away from there in some apartments
10 that the officers got from that place. I don't know. I don't
11 remember what else.

12 Q I'm sorry?

13 A What else.

14 Q Okay. And these were all things he told you about
15 himself?

16 A Yes.

17 Q And how did the -- how did the -- how did Lt. Martinez
18 refer to you when he was speaking with you?

19 A My first name.

20 Q Was that unusual?

21 A Yes.

22 Q How did officers and lieutenants usually refer to inmates
23 at the MDC?

24 A By their last name.

25 Q Did Lt. Martinez ever offer you anything when he was

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1 speaking to you?

2 A Yes.

3 Q What?

4 A He'd say to me you need something, just tell me. If you
5 want to move to the other unit -- why don't you move to the
6 other unit because that's where the women who are -- they're
7 not inmates, inmates like the ones on this side who've been in
8 for 15 or 20 years.

9 Q So you mentioned previously -- you testified earlier that
10 there were two units at the MDC for female inmates at the time,
11 6 North and 6 South, is that right?

12 A Yes.

13 Q And you testified that 6 North generally had inmates that
14 had not yet been sentenced, is that right?

15 A Yes.

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Direct - "Maria" - Shihata

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1 Q Were there also some sentenced prisoners who were in --

2 MR. RICCO: Objection, Judge. Can the witness

3 testify?

4 THE COURT: Yes. Don't lead.

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Direct - "Maria" - Shihata

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1 BY MS. SHIHATA:

2 Q What other types of prisoners were there in unit 6 North?

3 A In 6 North? People who were waiting to be sentenced.

4 Q You testified about some inmates that were in their fifth
5 -- that were -- strike that.

6 When you testified about a comment about potentially
7 moving you to another unit, what did you mean? Which other
8 unit?

9 A So in 6 North, in that unit, those are like new people.
10 There are some women who've been sentenced but very few. In
11 the 6 South unit, those are people who have been sentenced and
12 those people had come from a different prison who were doing
13 life, 20, 40 years.

14 Q So what did you understand the defendant to mean when he
15 said you could move to another unit?

16 A So it would be better for me. The other unit really was
17 better than this one.

18 Q Which other unit?

19 A 6 North.

20 Q Okay. So just to clarify, were there some sentenced
21 prisoners in 6 North?

22 A Yes.

23 MS. SHIHATA: Your Honor, this may be a good time for
24 a break.

25 THE COURT: All right. Ladies and gentlemen, we'll

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1 take a short recess.

2 THE CLERK: All rise.

3 (Jury exits.)

4 THE COURT: Okay. You can all sit or stand as you
5 please. You just don't have to stand up.

6 MS. ARGENTIERI: Judge, may they bring the witness to
7 the back to use the bathroom?

8 THE COURT: Sure.

9 MS. ARGENTIERI: Is that okay? And have a break?

10 THE COURT: The problem is there are -- well, there
11 are jurors that use the bathrooms. I think you should -- why
12 don't you wait a few minutes.

13 (The Court confers briefly with court personnel.)

14 (Recess from 2:47 p.m. until 2:57 p.m.)

15 (Jury enters.)

16 CONTINUED DIRECT EXAMINATION

17 "MARIA"

18 BY MS. SHIHATA:

19 Q Maria, when we left off you were testifying about some of
20 the comments or information Lt. Martinez gave to you about
21 himself.

22 A Yes.

23 Q Did there come a time when the defendant's conversations
24 with you made you uncomfortable?

25 A Yes.

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1 Q And what kind of things did he say to you that made you
2 uncomfortable?

3 A Like how did I satisfy my body.

4 Q He asked you that?

5 A Yes.

6 Q And what did you understand him to mean?

7 A He asked me like -- I mean, how do you satisfy your body,
8 like whether or not I played with myself.

9 Q And where were you when the defendant asked you that?

10 A I was taking some -- I was getting some liquids
11 out of the cabinet.

12 Q So you were in the lieutenant's office?

13 A Yes.

14 Q Was anyone else there?

15 A No.

16 Q And what, if any, reaction did you have when Lt. Martinez
17 asked you that question?

18 A I looked at him and I said "I beg your pardon." And he
19 said yeah, I mean, how do you satisfy yourself? I mean, you
20 know, we're all adults here. Don't be embarrassed.

21 Q Were you embarrassed?

22 A Yes.

23 Q Did Lt. Martinez make any other sexual comments to you?

24 A Yes.

25 Q What comments?

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1 A He said that when I went back to the unit I should play
2 with myself while I was thinking about him.

3 Q And how did you react to that?

4 A I said to him everything is in your mind because if you
5 don't think about sex, you're not going to have any desire.

6 Q Did you want Lt. Martinez to make those comments to you?

7 A No.

8 Q Did you want to discuss these matters with him?

9 A No.

10 Q How did his comments make you feel?

11 A I felt embarrassed. I felt ashamed. I don't like to talk
12 about sexual things like that, and much less with somebody like
13 him, a lieutenant.

14 Q Did you ever mention being married to Lt. Martinez?

15 A Yes.

16 Q How did that come up?

17 A I told him. Well, I told him I was married.

18 Q When did you tell him?

19 A While I was in the cabinet when he was talking to me and
20 asking about how did I satisfy my body. And when he said to me
21 well, you don't have to be embarrassed, I said, I'm married.

22 Q And how did he respond?

23 A Well, they love you so much that they haven't even come to
24 visit you.

25 Q And were you married at the time?

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1 A Yes.

2 Q Had your husband come to visit you at the MDC?

3 A No.

4 Q Now you testified earlier that before being transferred to
5 the MDC, you were incarcerated at the MCC in Manhattan, is that
6 right?

7 A Yes.

8 Q And when you were housed at the MCC in Manhattan, did you
9 meet a female inmate named Jenny?

10 A Yes.

11 Q And what, if any, understanding did you have as to why
12 Jenny was being housed at the MCC?

13 A Because she had had a problem at the MDC in Brooklyn with
14 an officer and they transferred her.

15 Q Did Lt. Martinez ever mention Jenny to you?

16 A Yes.

17 Q What did he say?

18 A I really don't remember how that conversation came up.

19 Q What do you remember him saying, if anything?

20 A It was something like, oh, Jenny, you knew Jenny, right?

21 And I said, yeah, I met her in Manhattan. He said -- and I
22 said -- I don't remember. I know that -- I know that Jenny was
23 worried because she was supposed to get out on the 10th. And
24 then Martinez said, yes, she got out because she kept quiet.

25 Q Got out of where?

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1 A Out of prison. Out of jail.

2 Q And what, if anything, did you understand him to mean when
3 he said she got out of jail because she kept quiet?

4 A That she didn't say anything about the problem that she
5 had. I don't know.

6 Q Now you testified about various sexual comments Lt.
7 Martinez to you. Did you tell any prison officials about those
8 comments while you were at MDC?

9 A No.

10 Q Why not?

11 A I didn't want to have any problems. I wanted to get out
12 of there and get away from there.

13 Q Did you take any action after the defendant made these
14 comments to you?

15 A I went to the counselor and I said that I wanted to stop
16 working.

17 Q And who is -- the counselor at the MDC, what is that
18 person's function?

19 A The counselor is the one who approves your visits. The
20 counselor is the one who gets you gets you what you need, like
21 your clothes, your shoes, your tennis shoes.

22 Q Okay. And what, if anything, did you ask the counselor?

23 A That I wanted to stop -- that I wanted to stop working
24 there. I wanted to stop cleaning there.

25 Q And did the counselor speak Spanish?

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1 A No.

2 Q So how did -- in what language did you ask that question
3 to the counselor in?

4 A English. A little English.

5 Q How was your English at the time?

6 A Bad. Bad.

7 Q And how is your English now?

8 A A little better, but I still don't speak English like
9 that.

10 Q Now did the -- what, if any, reaction did the counselor
11 have when you asked to stop cleaning?

12 A No. That if I quit that job, that I'd have to work at
13 night.

14 Q Did you tell the counselor about the comments Lt. Martinez
15 made to you?

16 A No.

17 Q Why not?

18 A Because no. Because I didn't want any problems. I'm a --
19 I was a prisoner. He was -- he was a boss, a big boss.
20 Because, no, I could be sent to the SHU. No.

21 Q Did you think she would believe you?

22 MR. RICCO: Objection. No. Withdrawn, Judge.

23 THE COURT: Withdrawn.

24 THE WITNESS: She -- no.

25 BY MS. SHIHATA:

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1 Q Now after you spoke to the counselor, did you -- did Lt.
2 Martinez continue to call you down to clean the lieutenant's
3 office?

4 A Yes.

5 Q And did you continue to go when called?

6 A It was obligatory. I had to go.

7 Q And did you go?

8 A Yes.

9 Q I'm showing the witness only what's been marked for
10 identification as Government Exhibit 5. Do you recognize this
11 photo?

12 A Yes.

13 Q Who do -- who is it?

14 A It's a friend, Melva Vasquez.

15 Q And where did you meet Melva, first meet Melva Vasquez?

16 A There in Brooklyn.

17 Q At the MDC?

18 A Yes.

19 Q Was she another inmate there?

20 A Yes.

21 MS. SHIHATA: I move to admit Government Exhibit 5.

22 MR. RICCO: Without objection, Your Honor.

23 THE COURT: It's admitted.

24 (Government Exhibit No. 5 received into evidence.)

25 BY MS. SHIHATA:

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1 Q Now where was Melva Vasquez at the MDC?

2 A She was in unit 6 South.

3 Q The same unit as you?

4 A Yes.

5 Q And when you arrived at the MDC, was Melva Vasquez already
6 there?

7 A Yes.

8 Q And when you first got to the MDC, was Melva Vasquez an
9 inmate who would get visits?

10 A Yes.

11 Q And did that change at some point?

12 A Yes.

13 Q Do you know why that changed?

14 A Because she had a visit, but she had some problem. She
15 had some problem at a visit. She had a button missing. She
16 had a button missing.

17 Q And what happened?

18 A They put her in the SHU and they took away her visits for
19 six months.

20 Q So did she stop having visits for a certain amount of
21 time?

22 A Yes.

23 Q And how long did you say that was?

24 A Six months. Six months.

25 Q And after six months, was Melva able to have visits again?

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1 A Yes.

2 Q And do you remember the day that Melva had her -- had a
3 visit again after six months?

4 A I do remember the day, but I don't remember the exact
5 date.

6 Q Do you remember around when that was?

7 A End of November or at the beginning of December.

8 Q Of what year?

9 A 2015.

10 Q And do you remember what day of the week it was?

11 A I know it was -- it was a weekend, Saturday, Sunday --

12 Q Were weekends --

13 A -- but I don't know.

14 Q Were weekends visiting days at the MDC?

15 A Yes.

16 Q And do you remember if it was a Saturday or Sunday?

17 A No. I know it was a Saturday or a Sunday, but I don't
18 know if it was a Saturday or a Sunday.

19 Q Meaning you don't know which day it was?

20 A No.

21 Q And that day, were you taken to the second floor to clean?

22 A Yes.

23 Q For who?

24 A For Lt. Martinez.

25 Q Do you recall around what time of day you went down to

Direct - "Maria" - Shihata

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1 clean for Lt. Martinez that day?

2 A At around 11:00 or 12:00. I really don't remember.

3 Q And how did you get to the second floor?

4 A An officer took us down and turned us over. He turned me
5 over to him. He was on duty.

6 Q Do you recall whether you went down alone or with another
7 inmate?

8 A I don't remember if I did.

9 Q After the officer escorted you to the second floor, where
10 did you go on the second floor?

11 A To the lieutenant's office.

12 Q And who, if anyone, was inside the lieutenant's office
13 when you arrived?

14 A Lt. Martinez.

15 Q Did the officer who escorted you that day, did he stay or
16 leave?

17 A He left.

18 Q What happened after the officer left?

19 A Lt. Martinez raped me.

20 Q When you first got to the office, what did you do?

21 A Knocked, say hi, and start getting ready, getting the
22 supplies to start cleaning.

23 Q And where did you go to get the supplies

24 A Where the lieutenant, where she had put the supplies down
25 here.

Direct - "Maria" - Shihata

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- 1 Q I'm showing you what's in evidence as Government Exhibit
2 103C, do you see the area where you got the supplies from?
- 3 A Yes.
- 4 Q Can you point it out, please.
- 5 A Down there.
- 6 Q So under the desk with the printer on it?
- 7 A Yes.
- 8 Q And where was Lt. Martinez when you were -- when you went
9 to get the cleaning supplies from there?
- 10 A In the chair.
- 11 Q Which chair?
- 12 A That one.
- 13 Q And for the record, you made a mark on the black chair
14 behind the desk in Government Exhibit 103C?
- 15 A Yes.
- 16 Q And what specifically were you doing when you went to get
17 those cleaning supplies?
- 18 A I went to get the sprays. So I was pouring pure spray
19 into another container so I could put water in there.
- 20 Q What happened next?
- 21 A He turned around.
- 22 Q Who turned around?
- 23 A Lt. Martinez.
- 24 Q And was he still sitting down?
- 25 A Yes.

Direct - "Maria" - Shihata

103

1 Q Did he turn around in his chair?

2 A Yes.

3 Q What happened next?

4 A He turned around. And when he turned, I looked and I
5 looked up at him and I said what are you doing?

6 Q What did you see when you looked at him?

7 A His penis that was out.

8 Q How was it out?

9 A Through his -- the fly of his pants.

10 Q The zipper?

11 A His fly.

12 Q Was it erect?

13 A Yes.

14 Q What happened next?

15 A He was forcing me towards him and I put my hands here on
16 his knees.

17 Q How was he forcing you towards him?

18 A He was grabbing me so he could put his penis in my mouth.

19 Q What part of your body did he grab?

20 A My head. My head, my shoulder.

21 Q Was he able to get his penis in your mouth?

22 A Yes.

23 Q How did that make you feel?

24 A Bad. Bad. I didn't want to have an problems. He said,
25 You're not going to have any problems. Look. Can't you see?

Direct - "Maria" - Shihata

104

1 Q Before we get to that, you testified a moment ago that you
2 put your hands on his knees, is that right?

3 A Yes.

4 Q What were you trying to do?

5 A Get away from him, but the desk -- I was hitting myself
6 against the desk, like here.

7 Q So looking at Government Exhibit 103 again, can you
8 describe what you mean again? Where were you hitting your
9 head?

10 A There.

11 Q And for the record, you've made a mark on the edge of the
12 desk with the printer on it, is that correct?

13 A Yes.

14 Q Now you testified a moment ago about -- strike that.

15 What, if anything, did the defendant say to you while this
16 was going on?

17 A That I was not going to get into trouble.

18 Q Did he explain?

19 A Yes. Because that computer had access to all of the
20 cameras and you can see who's on his or her way, who's getting
21 into the elevator who's walking over, who's where. He had
22 access to all of the floors, but he would pull up the second
23 floor all the time there.

24 Q Okay. And when you say the computer, are you referring to
25 the computer on the desk in Government Exhibit 103C?

Direct - "Maria" - Shihata

105

1 A Yes.

2 Q What happened after the defendant put his penis in your
3 mouth?

4 A After? He stood me up. He stood me up. Put me on the
5 desk, continued to pull my pants down, pull my pants down until
6 he pulled him them down, and he penetrated me.

7 Q Now you said he stood you up. Do you recall how he stood
8 you up?

9 A Yes.

10 Q How?

11 A By the arms.

12 Q What do you mean?

13 A I was squashed down there. He stood me up. And when he
14 stood me up, he put me down, lying down on the desk, sort of
15 half way on it. And he was behind me.

16 Q What part of your body did he put down on the desk?

17 A This part, my breast, my chest.

18 Q So were you face down on the desk?

19 A Yes.

20 Q And you testified he penetrated you. What part of your
21 body did he penetrate?

22 A My vagina.

23 Q And what did he penetrate your vagina with?

24 A His penis.

25 Q And was he behind you when he did that?

Direct - "Maria" - Shihata

106

- 1 A Yes.
- 2 Q Did you say anything to him while this was going on?
- 3 A What I said to him was if you're going to do it, use
- 4 protection. He said to me what? You want me to put gloves on?
- 5 Q Did he use protection?
- 6 A No.
- 7 Q When he penetrated you, did it hurt?
- 8 A Yes.
- 9 Q And how, if at all, were you reacting while all of this
- 10 was going on?
- 11 A Crying.
- 12 Q Did that make him stop?
- 13 A No.
- 14 Q What happened next?
- 15 A He finished.
- 16 Q Did he -- did he keep you on the desk?
- 17 A No.
- 18 Q What happened?
- 19 A He moved me over here and then here and that is where he
- 20 finished.
- 21 Q And for the record, you've made some markings on the
- 22 screen on Government Exhibit 103C. Is it correct that he
- 23 finished in this area to the right of the desk?
- 24 A Yes.
- 25 Q When he finished, did he take his penis out of you?

Direct - "Maria" - Shihata

107

- 1 A Yes.
- 2 Q How did you feel while all of this was going on?
- 3 A It's the worst thing that ever happened to me. It killed
- 4 me inside.
- 5 Q Were you scared?
- 6 A Yes.
- 7 Q Did you want to have Lt. Martinez's penis in your mouth
- 8 that day?
- 9 A No.
- 10 Q Did you want to have sex with him that day?
- 11 A No.
- 12 Q Did he force you to do those things?
- 13 A Yes.
- 14 Q Did you feel like you had any choice?
- 15 A No.
- 16 Q Now, Maria, how tall are you?
- 17 A 5-5, 5-1, 5.
- 18 Q That's a big range. Do you know which one?
- 19 A Five.
- 20 Q Five feet?
- 21 A Yes.
- 22 Q Can you just stand up for a moment. Have a seat. About
- 23 how much do you weigh?
- 24 A 138.
- 25 Q And is that about how much you weighed while you were at

Direct - "Maria" - Shihata

108

- 1 the MDC?
- 2 A Yes.
- 3 Q Is Lt. Martinez taller than you?
- 4 A Yes.
- 5 Q And at the time this happened, was he bigger than you?
- 6 A Yes.
- 7 Q Was he stronger than you?
- 8 A Yes.
- 9 Q After Lt. Martinez finished, did he say anything to you?
- 10 A Yes.
- 11 Q What did he say?
- 12 A Oh, you're bleeding.
- 13 Q Did you have your period that day?
- 14 A No.
- 15 Q What happened next?
- 16 A Well, he said that's what happens. Well, I turned a girl
- 17 into a woman.
- 18 Q That's a comment he made to you?
- 19 A Yes. Like it was nothing.
- 20 Q And did you ask him anything after that?
- 21 A I asked him when he was finished where the semen was?
- 22 Q And what did he say?
- 23 A He said he came inside of me.
- 24 Q What was your reaction.
- 25 A I said, what? How could you come inside of me? And I

Direct - "Maria" - Shihata

109

1 asked him to get me a pill.

2 Q What kind of pill?

3 A The morning after pill.

4 Q What is your understanding of what the morning after pill
5 is?

6 A When a man and a woman have sexual relations and the man
7 comes inside, the woman can take a pill the next day so that
8 she won't have a child.

9 Q What state were you in when you asked Lt. Martinez for the
10 morning after pill?

11 A I was very upset because he was refusing to get it for me.
12 He didn't -- he was refusing to get it until he saw how
13 desperate I was and then he said, okay.

14 Q When you say how desperate you were, what do you mean?
15 What were you doing?

16 A I was asking him for the pill crying, begging him. I
17 didn't even want to imagine being pregnant in that place. And
18 much less like that.

19 Q Now you testified that initially Lt. Martinez refused to
20 get you the morning after pill, is that right?

21 A Yes.

22 Q Did he say anything about why?

23 A He said no. That I wasn't going to have any problems
24 because he had had surgery. That I was not going to get
25 pregnant.

Direct - "Maria" - Shihata

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1 Q And did he explain to you what kind of surgery he had had?

2 A It is an operation that makes it so that a man cannot have
3 any more children unless he gets operated on again and then he
4 can have children once again. That's what he said.

5 Q That's what who said?

6 A Lt. Martinez.

7 Q Now you testified -- well, strike that.

8 Did he eventually agree to bring you the morning after
9 pill?

10 A Yes.

11 Q And did he say anything about when he would do that?

12 A He said I'm going to try to get to the unit by 12:00. That
13 night I mean.

14 Q 12:00 midnight?

15 A Yes.

16 Q Now at some point after Lt. Martinez raped you, did you
17 got to the bathroom?

18 A Yes.

19 Q And which bathroom did you go to?

20 A The bathroom that's outside of the office.

21 Q I'm showing you what's in evidence as Government Exhibit
22 102B, do you see the bathroom you went to in this photograph?

23 A Yes.

24 Q Can you point it out?

25 A That one.

Direct - "Maria" - Shihata

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- 1 Q And just for the record, you've made a mark on Government
2 Exhibit 102B on the left side, is that right?
- 3 A Yes.
- 4 Q What, if anything, did you do when you went to the
5 bathroom?
- 6 A I pressed down on my navel.
- 7 Q Why did you do that?
- 8 A To get all of that disgusting stuff that that disgusting
9 man had left inside of me. And because in the town where I'm
10 from, they say that if you do that you won't get pregnant.
- 11 Q The town that you're from in the Dominican Republic?
- 12 A Yes.
- 13 Q Did you notice anything while you were in the bathroom?
- 14 A Yes.
- 15 Q What did you notice?
- 16 A His semen and drops of blood.
- 17 Q Where did you notice the drops of blood?
- 18 A In the toilet bowl.
- 19 Q Anywhere else?
- 20 A On the paper when I wiped myself.
- 21 Q Now after the rape, did the defendant say anything to you
22 about talking about what happened?
- 23 A What he said was Not to tell anybody. You know, right?
- 24 Q I'm sorry. Is that what he said to you?
- 25 A I'm sorry?

Direct - "Maria" - Shihata

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1 Q I'm sorry. That was unclear. Let me ask it again. What
2 did he say to you about that?

3 A To not to tell anybody about it. And he said, you know,
4 like that I could have a problem, that they would take my time
5 away.

6 Q And what did you understand that to mean?

7 A That I would have to do more time in jail and that I --
8 and that I could end up having to go to SHU. That if any of
9 the women found out about it, I could be sent to the SHU.

10 Q Is that something he said to you?

11 A He said to me not to say anything about it to any of the
12 inmates. To not to say anything about it to anybody.

13 Q And he say anything about what could happen if you did?

14 A That it would go on his papers in Washington. And when
15 those papers came back, that I would get more time, more jail.

16 Q What do you -- what do you mean more jail?

17 A More time in jail. Like lose my time.

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Direct - "Maria" - Shihata

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Direct - "Maria" - Shihata

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1 Q Anything other than losing your good time?

2 MR. RICCO: Objection, Your Honor. That wasn't --

3 MS. SHIHATA: That was what?

4 MR. RICCO: Not the witness's testimony.

5 MS. SHIHATA: I'm just asking if he said anything

6 other than --

7 MR. RICCO: Objection to the question, Your Honor.

8 THE COURT: Sustained.

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Direct - "Maria" - Shihata

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1 BY MS. SHIHATA:

2 Q Did the defendant -- did Lt. Martinez say anything else
3 about that subject?

4 A That I could get more time in jail. He would always talk
5 about those damn papers that were going to go to Washington.

6 Q Okay. I just want to focus on this first time for now.
7 Okay? Now at some point did you go back to your unit?

8 A Yes.

9 Q And how did you get back to your unit?

10 A With an officer who came to pick me up. He took me to the
11 unit officer's office and from there I could do whatever I
12 wanted.

13 Q So was that a normal procedure when you would go to clean?

14 A Yes.

15 Q That the officer would escort you back to the unit office,
16 sorry, to the guard's office in the unit?

17 A Yes.

18 Q Now do you recall around what time you got back to the
19 unit that day?

20 A At around 3:00, between 2:40-3:00, sometime around then.
21 Or almost 3:30.

22 Q So sometime in that time range?

23 A Yes.

24 Q After you got back to the unit, did you go to the bathroom
25 area?

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1 A Yes.

2 Q And what happened when you went there?

3 A I called out to a girl who we used to call LaMenor.

4 Q Do you know her name?

5 A Yes. Kiara. Kiara Maldonado.

6 Q And why did you call Kiara Maldonado LeMenor?

7 A Because she was the youngest. She was the youngest. And
8 she was kind of -- she was like a kid, a young kid.

9 Q About how old was Kiara at the time?

10 A I think she turned 21 or 22, something like that.

11 Q I'm showing the witness only what's been marked for
12 identification as Government Exhibit 6, do you recognize this
13 photo?

14 A Yes.

15 Q Who is this?

16 A Kiara.

17 Q Kiara Maldonado?

18 A Yes.

19 MS. SHIHATA: I move to admit Government Exhibit 6.

20 MR. RICCO: Without objection, Your Honor. Without
21 objection.

22 THE COURT: It's admitted.

23 (Government Exhibit No. 6 received in evidence.)

24 MS. SHIHATA: And may we publish it?

25 THE COURT: Yes.

Direct - "Maria" - Shihata

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1 BY MS. SHIHATA:

2 Q Now you said you called out for Kiara?

3 A Yes.

4 Q And what happened next?

5 A She came in.

6 Q Came? Where were you when you called out for her?

7 A In the bathroom area.

8 Q I'm showing you what's in evidence as Government Exhibit
9 104D, is this the area where you called out for Kiara?

10 A Yes.

11 Q And do you see where specifically you were when this
12 happened?

13 A I was walking here. And by the time she got here, I was
14 here.

15 Q Okay. And for the record, you've made some marks on this
16 -- on the screen. First, is there what looks to be a hallway
17 on this photograph?

18 A Yes.

19 Q And is that where you indicated you were walking?

20 A Yes.

21 Q And do you see some sinks on the right side of the
22 photograph?

23 A Yes.

24 Q What's across from the sinks?

25 A The bathroom stalls and the showers.

Direct - "Maria" - Shihata

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1 Q Which comes first, the bathroom stalls or the showers?

2 A These are the showers, the first ones, and these are the
3 toilets.

4 Q Okay. And where were you after -- where did you go after
5 you walked through the hallway?

6 A To put the stuff away, the mop, in this little room here.
7 And there was a sink in there. You could dump out your water
8 in there.

9 Q Okay. What room are you referring to using Government
10 Exhibit 104D?

11 A That door right there. It's a small room.

12 Q And right there you made a mark at the -- in the middle of
13 the photograph in what looks like a doorway?

14 A Yes.

15 Q And what happened after you called out for Kiara?

16 A She came. And I was here. We were here.

17 Q You were where?

18 A Here, in this area right there.

19 Q So is that the area in front of the toilets?

20 A Yes. Yes.

21 Q What happened?

22 A I told her.

23 Q What did you tell her?

24 A That son of a bitch had penetrated me.

25 Q Did you tell her who penetrated you?

Direct - "Maria" - Shihata

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- 1 A Lt. Martinez.
- 2 Q And how, if at all, did Kiara react?
- 3 A Hmm. Normal. Like it was something, you know, happy.
- 4 Like it was something good. Oh, my God, dude.
- 5 Q That was her reaction?
- 6 A Yes. Like -- I understood her. She was just a little
- 7 girl.
- 8 Q And what was your reaction to her reaction?
- 9 A Well, I didn't say anything to her but inside she just
- 10 wasn't understanding what I wanted to tell her.
- 11 Q Were you upset?
- 12 A Yes.
- 13 Q Did you tell her anything else?
- 14 A I said come look. I said, no, no, no. Don't come into
- 15 the same stall because he's probably watching us on the camera.
- 16 And so she went into the next stall where the toilet was and we
- 17 continued talking there. And I told her that paper -- every
- 18 time I wiped myself I was still bleeding.
- 19 Q After you spoke with Kiara did you speak with anyone else
- 20 in the unit?
- 21 A Yes.
- 22 Q Who?
- 23 A With Melva and Danilda.
- 24 Q I'm showing you what's in evidence as Government's Exhibit
- 25 5. Is that Melva?

Direct - "Maria" - Shihata

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1 A Yes.

2 Q And you said the other person you spoke with was who?

3 A Danilda.

4 Q I'm showing the witness only what's been marked for
5 identification as Government's Exhibit 4. Do you recognize
6 this?

7 A Yes.

8 Q Danilda.

9 A And do you know Danilda's full name?

10 Q Danilda Osoria or Lora.

11 MS. SHIHATA: I move to admit Government Exhibit 4.

12 MR. RICCO: Without objection, Your Honor.

13 THE COURT: It's admitted.

14 (Government's Exhibit No. 4 received in full into
15 evidence)

16 Q And do you know Danilda Lora by any nicknames?

17 A Yes.

18 Q What nickname?

19 A Nani.

20 Q And is that spelled N-A-N-I?

21 A Yes.

22 Q Now do you recall where you were when you spoke to Melva
23 and Danilda?

24 A Yes.

25 Q Where?

Direct - "Maria" - Shihata

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1 A In the aisle where Nani slept. Like at her bed. In that
2 area. Around there.

3 Q And at the time do you recall where Nani's bed was, or
4 where Danilda's bed was in the unit?

5 A Yes.

6 Q Where?

7 A In row 15.

8 Q I'm showing you what's in evidence as Government Exhibit
9 104B. Do you see row 15 in this photograph?

10 A Yes.

11 Q Can you point out where that is?

12 A It's this aisle. Her bed was sort of three beds to the
13 bag, like there.

14 Q Okay. You see on this photograph is there a no. 15 on a
15 column?

16 A Yes.

17 Q Was that row 15?

18 A Yes.

19 Q And what bed did Danilda have on row 15?

20 A Three beds in that way.

21 Q Okay. And did Danilda have a top or bottom bunk?

22 A Bottom.

23 Q Now to the best of your memory, who was there when you
24 spoke by Danilda's bed?

25 A Danilda, Melva and Kiara.

Direct - "Maria" - Shihata

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1 Q And what, if anything, did you say to them at that time?

2 A The same thing. That he had penetrated me and that he
3 didn't care that I had bled.

4 Q And when you told them these things, what state were you
5 in?

6 A Bad.

7 Q How did Nani and Melva react? How did Danilda and Melva
8 react?

9 A Melva was the only one who understood me somewhat.
10 Danilda was just like -- Danilda said, hey, we're in jail. So
11 like what woman doesn't want a piece of dick. She took it like
12 (indiscernible) just like Kiara.

13 Q And how did that make you feel?

14 A Bad. I'd say worse because Kiara is a very young girl.
15 But Danilda -- Danilda was a woman. And I had -- I said to
16 Danilda, Danilda, it's not the same thing. And she said just
17 take it easy. Calm down. What are you crying about? You're a
18 woman. But not Melva. Melva was different.

19 And she said to Melva, Melva, do you think I'm really
20 detached from people's feelings? Why is she acting like that?

21 Q Who said that?

22 A Danilda.

23 Q And how were you acting?

24 A I was crying but Danilda was like saying why is she
25 crying? Why don't I feel that? Is it because I have two

Direct - "Maria" - Shihata

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1 daughters? He's given her some dick, so hey. That was the
2 kind of comment that she made.

3 Q Now did you -- what did you do, if anything, after that
4 conversation?

5 A I went to my bed.

6 Q Why?

7 A I went to my bed. I didn't want to -- what I wanted to do
8 was just sleep.

9 Q Were you able to sleep?

10 A No.

11 Q Why not?

12 A Because I couldn't stop crying.

13 Q At some point did you leave your bed?

14 A Yes.

15 Q Where did you go?

16 A Back to Danilda's bed.

17 Q Why?

18 A Because I just couldn't stand being in my bed crying any
19 longer because I just wanted somebody to hug me. And it's like
20 she couldn't understand what I meant.

21 Q And what happened when you went to Danilda's bed?

22 A Nothing. I got up and I went over to her bed crying but
23 by the time I got there I was like even more upset.

24 So then it was that Danilda and Kiara started to take me
25 more seriously.

Direct - "Maria" - Shihata

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1 Q Did you say anything about being worried about getting
2 pregnant?

3 A Yes.

4 Q What did you say?

5 A That he came inside and I asked him for the pill. And
6 that he said oh, I'm going to try to come tonight.

7 Q Now at some point did you go to the bathroom again?

8 A Yes.

9 Q And what, if anything, happened when you were in the
10 bathroom?

11 A I called Danilda.

12 Q Why did you call for Danilda?

13 A Because I still was staining the paper.

14 And I wanted to use a -- I wanted to put on a sanitary napkin.

15 Q When you said you were still staining the paper, what do
16 you mean?

17 A With blood.

18 Q And after you noticed that -- well, after you called for
19 Danilda, what happened?

20 A She came. And I said please bring me a Kotex. And so she
21 went and she got me one.

22 Q What did she get you?

23 A A Kotex. A sanitary napkin.

24 MS. SHIHATA: If I could just have one moment, Your
25 Honor.

Direct - "Maria" - Shihata

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1 (Pause.)

2 MS. SHIHATA: Your Honor, it might make sense to take
3 a break if we're going to take another break today now.

4 THE COURT: Okay. Ladies and gentleman, we'll take a
5 short break.

6 (Jury exits)

7 (Recess from 4:24 p.m. until 4:38 p.m.)

8 (Jury enters.)

9 BY MS. SHIHATA:

10 Q Now, Maria, I just wanted to go back for a moment. You
11 testified earlier this afternoon that you could not recall
12 whether you went to clean that day we'd been discussing alone
13 or with someone else. Do you recall that? Do you remember
14 testifying to that?

15 A Yes.

16 Q And at that time period who was the other person that you
17 would sometimes clean with?

18 A Odie de la Cruz.

19 Q And I'm showing you what's in evidence as Government
20 Exhibit 8 again.

21 A Yes.

22 Q Is that Odie de la Cruz?

23 A Yes.

24 Q Now you testified earlier that the day this happened was a
25 visiting day. Is that correct?

Direct - "Maria" - Shihata

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1 A Yes.

2 Q Do you recall whether any of the other inmates you spoke
3 to that day had visits?

4 A Yes.

5 Q Who?

6 A Melva and Nani.

7 Q And do you recall whether or not Kiara had a visit that
8 day?

9 A No, I don't remember but she was in the unit when I got
10 there.

11 Q Now when you spoke with Kiara, Danilda and Melva that day
12 did you tell them all of the details of what happened in the
13 lieutenant's office?

14 A Not all of them.

15 Q At some point after you got back to the unit did you take
16 a shower?

17 A I don't remember if I took a bath or not. What I do
18 remember is that I lay down, I got up again. I went to where
19 Nani was and then I went back to my bed.

20 Q Now at some point after getting back to the unit did you
21 see Lt. Martinez again?

22 A Yes.

23 Q And around what time was it?

24 A Like 12:30, 1 o'clock. No, it wasn't 1 o'clock yet.

25 Q So what time do you think it was?

Direct - "Maria" - Shihata

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- 1 A It was like around 12:30, 1:00 around there. 12:30, 1
2 o'clock.
- 3 Q In the morning?
- 4 A Yes.
- 5 Q So this was several hours after you had gotten back to the
6 unit?
- 7 A Yes.
- 8 Q And where were you when you saw him?
- 9 A Sitting on my bed.
- 10 Q Where was your bed at the time?
- 11 A The 16th row. Excuse me. The 17th row.
- 12 Q I'm showing you what's in evidence as Government Exhibit
13 104-A. Do you see the row where your bed was in this
14 photograph?
- 15 A Yes.
- 16 Q Where was it?
- 17 A This row.
- 18 Q And for the record, you've made a mark on the screen to
19 the right of the column that has the number 17 on it. Is that
20 correct?
- 21 A Yes.
- 22 Q And do you recall what bed you had on that row?
- 23 A Number 3 counting from the beginning, 1, 2, 3.
- 24 Q Did you have a top or bottom bunk?
- 25 A Upper.

Direct - "Maria" - Shihata

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1 Q And were you facing -- what part of the unit were you
2 facing when you were in bed?

3 A You could see the entire unit, but the entrance was like
4 here.

5 Q Could you see the entrance?

6 A Yes.

7 Q Now where did you first see the defendant?

8 A As he was coming to the unit. There's a window. As he
9 was walking and then when he came in.

10 Q Showing you what's in evidence as Government Exhibit 104-
11 C. Do you see the entrance to the unit in this photograph?

12 A Yes.

13 Q Where is it?

14 A Here.

15 Q And for the record, you've made a mark on the screen
16 pointing out a door in the middle of the photograph. Is that
17 correct?

18 A Yes.

19 Q Now at that time of the night, or early morning, is it
20 dark in the unit?

21 A Yes, but not that dark because they never turn off all of
22 the lights.

23 Q And when you were in this unit were there TV's in the
24 unit?

25 A Yes.

Direct - "Maria" - Shihata

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1 Q And where were the TV's?

2 A There was one on this side. There was another one facing
3 that way. There was another one here, another one there, and
4 like near a room there was another one.

5 Q Okay. You've made various markings on Government Exhibit
6 104-C on the various columns depicted in this photograph.

7 Were the TV's on -- mounted on the columns at the time you
8 were there?

9 A Yes, on the three columns.

10 Q At the top?

11 A Yes. This column had two.

12 Q And how did inmates -- well, could inmates watch TV from
13 bed in the unit?

14 A Yes.

15 Q And how did they do that?

16 A Because there was an MP3, like a radio and the televisions
17 were turned in a way that you could see them from your bed and
18 you could move them.

19 Q So could you hear what was on TV with headphones?

20 A Yes.

21 Q Now do you recall one way or another whether the TV's were
22 on that night?

23 A That I can't remember.

24 Q All right. After you saw Lt. Martinez come into the unit,
25 what happened next?

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1 A He came in. I was sitting on my bed. He raised his arm
2 and he did like that. I got up. And I walked over to him.

3 Q Okay. Let's slow down for a moment.

4 You said he did like that. Can you describe in words the
5 movement you made with your hand?

6 A He raised his hand, and moved his hand. He had something
7 in his hand.

8 Q And what direction was he looking in when he did that?

9 A At me. We looked at each other. When he did that to me I
10 got up and I went over to him.

11 Q And had you been waiting for him that night?

12 A Yes.

13 Q Why?

14 A Because he said he was going to try to bring me that pill.

15 Q And what happened after he waved his hand with something
16 in it in your direction?

17 A I got up, got down and I walked over to where he was. And
18 he gave it to me and he said it's inside. I said thank you.
19 And then I left.

20 Q You said you walked over to him. Where was he when you
21 walked over to him?

22 A He was here when I got over to where he was.

23 Q Just because there's a lot of markings on here, I'm going
24 to clear the picture and ask you to do that again.

25 Can you mark again on Government Exhibit 104-B -- sorry

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1 104-C where he was?

2 A He was here. Over here.

3 Q And for the record you've made a marking by where the ice
4 machine is. Is that correct?

5 A Yes.

6 Q I'm showing you what's in evidence as Government Exhibit
7 104-E. Is this a closer up photo of the area where you walked
8 towards Lt. Martinez?

9 A Yes.

10 Q And what did Lt. Martinez hand you when you walked over to
11 him?

12 A My ID.

13 Q And what did it look like?

14 A My ID. A little piece of paper with my picture, my inmate
15 number, name, last name, date of birth, height -- I don't know
16 if my height was on there.

17 Q And the ID's at the MDC at the time you were there, you
18 described it as a piece of paper. Was it inside something?

19 A Yes. A sheet of paper like this. A sheet of paper and
20 inside -- well, like a cover around it. A cover like that
21 where you can put an ID in. It's a plastic thing.

22 Q Plastic cover?

23 A Yes.

24 Q And did you already have your ID with you when he gave you
25 -- or did you already have an ID when he gave you the ID?

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- 1 A Yes.
- 2 Q And what, if anything, did Lt. Martinez say to you when he
- 3 handed you the ID?
- 4 A That it was inside.
- 5 Q That what was inside?
- 6 A He didn't say the pill is in there. He just said it's in
- 7 there.
- 8 Q Okay. And what, if anything, did you hear him -- sorry.
- 9 Strike that. Was there anyone else in that area at the time?
- 10 A Yes.
- 11 Q And who else was there?
- 12 A The officer. The unit officer.
- 13 Q And going back to Government Exhibit 104-E, is the doorway
- 14 depicted on the left, is that the unit officer's office?
- 15 A Yes.
- 16 Q And what, if anything, did you hear Lt. Martinez say to
- 17 the unit officer?
- 18 A He said oh, she forgot her ID there when she was cleaning
- 19 downstairs.
- 20 Q What, if anything, did you do after Lt. Martinez handed
- 21 you the ID?
- 22 A I went to my bed. I went into my locker to get a cup,
- 23 went back to get ice and water from this little machine.
- 24 Q And is that the machine in Government Exhibit 104-E.
- 25 A Yes.

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1 Q And what did you do next?

2 A I walked to the area where the bathrooms are until I went
3 into that little room, you know, where the sink is.

4 Q I'm showing you what's in evidence as Government Exhibit
5 104-D. Can you show me -- can you show where you went -- first
6 of all, is this the bathroom area?

7 A Yes.

8 Q And where did you go?

9 A I walked down this hallway until I went inside -- inside
10 that room. It's a little room, it's about this size.

11 Q About what size?

12 A This area right -- this square area where I am right now.

13 Q So the witness stand area?

14 A Yes.

15 Q And just so the record is clear, is that in this -- is
16 that where I'm pointing which is a doorway in the middle of
17 this exhibit?

18 A Yes.

19 Q And what, if anything, did you do inside that room?

20 A I took out the piece of paper from the cover, I unfolded
21 it because he had folded it, and I took out the pill.

22 Q Was the pill in any sort of packaging at the time?

23 A Yes.

24 Q What did the packaging look like?

25 A Really hard to open, it was like a plastic like this, like

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1 square and the pill was right in the middle. It wasn't the
2 kind of pill you do TA and then it comes out.

3 Q Meaning it was hard to get -- push it out?

4 A You could not press it to get it out. You had to break it
5 open with something in order to get it open.

6 Q Were you able to get the pill out?

7 A Yes.

8 Q And what, if anything, did you do after that?

9 A I took it.

10 Q You took the pill?

11 A Yes.

12 Q What did you do next?

13 A I put that little packaging away and I went to my bed.

14 Q And what did you do with the packaging?

15 A Put it away.

16 Q And why did you keep it at that time?

17 A So Danilda would read it to me to see if that was the
18 pill.

19 Q Where if anywhere was Danilda when Lt. Martinez brought
20 you the pill?

21 A Working.

22 Q What job did Danilda have at the MDC?

23 A In the laundry -- no sorry, in the kitchen, but the
24 kitchen for the entire jail.

25 Q So not the kitchen for your unit, is that right?

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- 1 A Yes.
- 2 Q And at what time -- well did Danilda work in the kitchen
- 3 alone or with others?
- 4 A No, with women, lots of women.
- 5 Q And generally speaking, around what time would they go to
- 6 the kitchen to work?
- 7 A What time did they leave?
- 8 Q No, what time did they leave the unit to go to the kitchen
- 9 to work, approximately and generally?
- 10 A 10:30, 11:00, some time around then.
- 11 Q And what time did the women who worked in the kitchen,
- 12 what time did they come back to the unit, approximately?
- 13 A It would depend. Sometimes they'd come back at 3:00,
- 14 sometimes not until 4:00 or 5:00 in the morning. It was
- 15 whatever time they finished working.
- 16 Q And I'm showing you what's in evidence as Government
- 17 Exhibit 4 again. Is that the Danilda?
- 18 A Yes.
- 19 Q Now why did you want Danilda to read the packaging?
- 20 A Because the packaging was in English and she knows
- 21 English.
- 22 Q Can she read English?
- 23 A Yes.
- 24 Q Now at some point did you see Danilda?
- 25 A Yes.

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1 Q Around when?

2 A I don't really remember whether it was at 3:00, I don't
3 remember, but I know they got back really late that day.

4 Q So you saw her when she got back from work is that what
5 you're saying?

6 A Yes, I was waiting for her.

7 Q And what happened after you saw her get back from work?

8 A I took my paper as if I were going to the bathroom and I
9 said to her, I asked her, was this the pill?

10 Q And what, if anything, did she do?

11 A She took it, she read it and she said yes, that's it.

12 Q And what, if anything, did you do with the packaging of
13 the pill after that?

14 A I went to the toilet and I flushed it down the toilet.

15 Q Why did you do that?

16 A Because that would have been a problem and Melva yelled at
17 me, throw that away, throw that away.

18 Q Okay. So Melva -- you saw Melva as well?

19 A Yes, the three of us were there when Danilda was reading
20 that to me, she was there, all three of us.

21 Q So who are the three people you're talking about, yourself
22 and who else?

23 A Melva, Danilda and me.

24 Q Okay. And does Melva speak English well?

25 A No, she doesn't know English.

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1 Q Why would it be a problem for you to keep the Plan B
2 packaging -- or sorry, to keep the pill packaging?

3 A Because it's something from the outside, it's like
4 contraband. Anything you have from the outside that isn't
5 permitted inside is contraband and they'll send you to the shoe
6 for that?

7 Q And what is the SHU?

8 A It's like the punishment room. It's a room where -- well
9 this is what I've heard, I never went there. They put your
10 food in there, they take you out twice a week to wash and they
11 take everything away from you, phone. In other words, you have
12 access to nothing, you are just locked up in that little room
13 there.

14 Q Now you testified earlier that you told Kiara, Danilda and
15 Melva, that Lt. Martinez penetrated you. Did you tell any
16 prison officials that day what had happened?

17 A No.

18 Q Why not?

19 A Because I didn't. I didn't want any problems, I didn't
20 want to be there a single day longer. I didn't want my mother
21 to be worried, why hadn't I called her. I just didn't want --
22 no, no, no, no.

23 Q And why did you think that telling someone would result in
24 you spending more time in jail?

25 A Martinez would always say to me, even though I used to

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1 argue with him about it, and I asked several people about it,
2 how -- it's unfair, how is it that I'm going to end up having
3 to do more time?

4 Q Okay. I just want to stop you for a moment. I'm talking
5 about now this one day that we've spoke -- that you've
6 testified about, that first time. Why didn't you tell any
7 prison officials that time?

8 A No, because I -- no, because, no because I didn't want to
9 have any problems. I didn't know enough English to be able to
10 explain it, I didn't have anybody here, no matter what -- and
11 no matter what the circumstances are, I'm a criminal. He's a
12 man, he's a man who has a certain position. Who's going to
13 believe a criminal compared to a person who has a position, who
14 has his life? No.

15 Q Now after the first time Lt. Martinez raped you, did he
16 continue to call for you to clean the lieutenant's office?

17 A Yes.

18 Q And did he rape you again?

19 A Yes.

20 Q In what way?

21 A Every way.

22 Q Did he penetrate you?

23 A Yes.

24 Q Sorry, did you say something? Can you repeat --

25 A One and a thousand times.

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1 Q And where did he penetrate you?

2 A In my vagina.

3 Q And what did he penetrate you with?

4 A With his penis.

5 Q And where were you -- where in the MDC were you when this
6 happened?

7 A In the lieutenant's office.

8 Q Was anyone else other than you and Lt. Martinez in the
9 office when this took place?

10 A No.

11 Q Now, do you recall how many times the defendant raped you
12 while you were at the MDC?

13 A No.

14 Q Was it multiple times?

15 A Yes.

16 Q And after the first time it happened, did you ask him for
17 the morning after pill again?

18 A Yes, but he never bought it for me again.

19 Q Now, I'm showing you what's in evidence as Government
20 Exhibit 3, who is this again?

21 A That's Officer Smith.

22 Q And was he an officer at the MDC?

23 A Yes.

24 Q And did he escort you to clean the second floor sometimes?

25 A Yes.

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1 Q And you testified earlier that Officer Smith was an
2 officer -- one officer who stayed with you when you would clean
3 the second floor, is that correct?

4 A Yes.

5 Q And did Officer Smith escort you to the lieutenant's
6 office for a number of lieutenants?

7 A Yes.

8 Q Including Lt. Martinez?

9 A Yes.

10 Q And to the best of your recollection, about how many times
11 do you recall Officer Smith escorting you to the lieutenant's
12 office to clean for Lt. Martinez?

13 A Once or twice, not that many times. He didn't -- maybe
14 three, no more than three.

15 Q Now, you testified that Officer Smith usually stayed on
16 the -- stayed in the -- strike that. Was there ever an
17 occasion where Officer Smith did not stay with you when you
18 were cleaning the lieutenant's office area on the second floor?

19 A Yes.

20 Q Okay. I'd like to direct your attention to that
21 particular day. Do you recall what day of the week it was?

22 A It was a weekend, Friday, Saturday or Sunday, but I don't
23 remember which one of those three days.

24 Q And were those -- you testified earlier that Lieutenant
25 Martinez raped you multiple times, is that correct?

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- 1 A Yes.
- 2 Q And what days of the week did those rapes happen on?
- 3 A Friday, Saturday, Sunday.
- 4 Q Those are the times he would call for you to come down to
- 5 clean?
- 6 A Yes.
- 7 Q Now, going back to the date that we were talking about
- 8 earlier, when Officer Smith -- the time when Officer Smith
- 9 didn't stay. Where if anywhere did Officer Smith take you when
- 10 you arrived at the second floor?
- 11 A The lieutenant's office.
- 12 Q And what if anything happened when you got there?
- 13 A I started cleaning.
- 14 Q Who if anyone was inside the lieutenant's office?
- 15 A Lt. Martinez and Officer Smith.
- 16 Q And where -- you said you started to clean. Where did you
- 17 start to clean?
- 18 A I started taking out the trash, sweeping.
- 19 Q And what area were you sweeping?
- 20 A The part that is in front of the bathrooms and the part
- 21 that's in front of the office.
- 22 Q I'm showing you what's in evidence as Government Exhibit
- 23 102-A and Government Exhibit 102-B. Is that the area you were
- 24 just referring to?
- 25 A Yes.

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1 Q And what if anything did you do after sweeping that area?

2 A I started to clean the bathrooms.

3 Q And those are the -- are you referring to the bathrooms
4 that are in this same area in Government Exhibit 102-B?

5 A Yes.

6 Q And what if anything happened while you were cleaning the
7 bathroom?

8 A I heard -- said that Lt. Martinez said to Officer Smith,
9 that's what I heard, oh, can you do me a favor?

10 Q And did you hear that in English or Spanish or what
11 language?

12 A English because I understood that part.

13 Q And were -- without going into what, were other things
14 said?

15 A Well the officer answered, sure, like of course. But then
16 after that I did not understand anything else.

17 Q So that's the portion of -- that's the portion of the
18 conversation that you understood, is that correct?

19 A Yes.

20 Q And what, if anything, did you see next?

21 A Smith left.

22 Q And where were you when Officer Smith left?

23 A In the bathroom, cleaning the bathroom.

24 Q And where did you see him leave?

25 A To the door to the exit there.

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- 1 Q And for the record you made a mark on the screen on
2 Government Exhibit 102-B, you've marked the door under the exit
3 sign, is that correct?
- 4 A Yes.
- 5 Q And what happened next?
- 6 A He started to call me by my first name?
- 7 Q Who called you by your first name?
- 8 A Lt. Martinez.
- 9 Q And where were you when that happened?
- 10 A In the bathroom.
- 11 Q And where to your knowledge was Lt. Martinez?
- 12 A In the office.
- 13 Q In which office?
- 14 A The lieutenant's office.
- 15 Q And what happened -- or how if -- what happened after he
16 called out your name?
- 17 A Since he saw that I didn't come, he got up to come and get
18 me, but he didn't come into the bathroom. He stood in the
19 doorway.
- 20 Q So after he called out to you -- out your name, did you go
21 in the lieutenant's office or you stayed in the bathroom?
- 22 A I stayed in the bathroom.
- 23 Q Why did you stay in the bathroom?
- 24 A Because I didn't go because I knew what it was.
- 25 Q You testified that Lt. Martinez came to the doorway of the

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1 bathroom, is that correct?

2 A Yes.

3 Q What happened next?

4 A He saw me there and he said, walk, I don't have a lot of
5 time. He turned around and I followed him.

6 Q Followed him where?

7 A The lieutenant's office.

8 Q Now, you said he -- you testified he said look, I don't
9 have a lot of time. Do you recall if he said anything else?

10 A He said he didn't have a lot of time because he had sent
11 Smith to the west side, to some other place in the west side.
12 He said to me, it's a long hallway, so walk, it's going to take
13 him 10 minutes to get there and 10 minutes to come back, so I
14 have about 20 minutes.

15 Q When you -- and to your knowledge is the MDC comprised of
16 more than one building?

17 A Yes.

18 Q Do you know how many buildings?

19 A No.

20 Q Do you know what the building you were housed in was
21 called?

22 A I really don't.

23 Q Now, when Lt. Martinez came to the doorway of the bathroom
24 and said this to you, what was his tone?

25 A Like come on, walk, I only have 20 minutes, I sent Smith,

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1 you know. He was mad because he was calling out to me for a
2 while and I didn't come when he called.

3 Q Now, when you had -- when you were cleaning the bathroom,
4 did you have anything in your hands?

5 A Yes.

6 Q What?

7 A The mop.

8 Q And did you have that mop with you when you followed
9 Lieutenant Martinez towards the lieutenant's office?

10 A Yes.

11 Q What if anything did you do with the mop?

12 A As if to hit him with it -- as if I were to try to hit him
13 in the head with it?

14 Q And in what direction was Lt. Martinez facing when you did
15 that?

16 A His back was to me, he was walking to their office at that
17 point.

18 Q Did you actually hit him?

19 A No.

20 Q And you made a movement with your hands while you were
21 testifying. Can you describe in words what you did?

22 A I raised my arm -- both of my arms with the mop stick to
23 try to hit him in the head?

24 Q And did you actually try?

25 A I raised my arms to, but I didn't hit him.

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1 Q But you didn't do it, is that what you said?

2 A I didn't hit him.

3 Q And why didn't you hit him?

4 A What I would say to myself all the time was, if I hit him
5 I'd have to hit him so he doesn't get up again. And I didn't
6 hit him because my entire family was in the DR and I would say
7 to myself, they will never know why I'm going to have to spend
8 the rest of my life, as they say, in jail.

9 Q So can you explain that? What did you think would happen
10 if you hit him with the mop?

11 THE INTERPRETER: Counsel, the interpreter didn't get
12 the last part of the question?

13 Q What did you think would happen if you hit him with the
14 mop?

15 A Well I'd be hitting a lieutenant in a prison. I would
16 have gotten time, I would have gotten a lot of time.

17 Q Now, what happened after you followed Lt. Martinez into
18 the lieutenant's office?

19 A He raped me, again.

20 Q In what part of the office?

21 A (No verbal response.)

22 Q Can you describe in what part of the office.

23 A Like in front of the desk.

24 Q I'm showing you what's in evidence as Government Exhibit
25 103-C. Is this the desk you're referring to?

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1 A Yes.

2 Q And what happened in front of the desk?

3 A Oh, my God -- he started up again, Nadia.

4 Q How did he start up again?

5 A He grabbed me and he started to grope me, put his hand in
6 my vagina. He would unbutton me, I would button myself back
7 up, he would unbutton me, everything I had buttoned back up
8 until --

9 MS. SHIHATA: Do you need a minute?

10 A No. I just want to get this over with.

11 Q Now, you testified that this happened in front of the
12 desk, is that correct?

13 A Yes.

14 Q And what if anything did the -- did Lt. Martinez do with
15 the computer on the desk?

16 A He turned it, not so much because the wires prevented him
17 from doing it.

18 Q And what part of the computer did he turn?

19 A This part, the monitor.

20 Q And did you see what was on the monitor?

21 A Yes.

22 Q What was on the monitor?

23 A The second floor. Each square showed a different part of
24 the second floor.

25 Q Meaning the camera footage?

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- 1 A Yes.
- 2 Q And what if anything did Lt. Martinez do after turning the
3 computer monitor?
- 4 A He moved me over here because the computer screen couldn't
5 turn -- interpreter correction -- the computer monitor couldn't
6 turn so much.
- 7 Q So you made a -- just for the record, you've made a mark
8 on the screen showing Government Exhibit 103-C, you made a mark
9 on the right side of the desk, is that correct?
- 10 A Yes.
- 11 Q And so is that the area that he brought you to?
- 12 A Yes.
- 13 Q What happened next?
- 14 A He pushed me so my body would be on this part of the desk.
- 15 Q What part of your body?
- 16 A Breasts, this area.
- 17 Q Your chest?
- 18 A Um-hmm.
- 19 Q And what happened next?
- 20 A He continued to grope me until he was able to pull my
21 pants down and penetrate me again.
- 22 Q And what part of your body did he penetrate?
- 23 A My vagina.
- 24 Q What did he penetrate your vagina with?
- 25 A His penis.

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1 Q How did you feel while this was going on?

2 A Powerless, miserable. I would rather have been killed.

3 Q Did you want to have Lt. Martinez's penis in your vagina
4 that day?

5 A No.

6 Q Did you feel like you had any choice about that?

7 A No.

8 Q Did he force you to have sex with him that day?

9 A Yes.

10 MS. SHIHATA: Your Honor, could we have a brief
11 sidebar?

12 THE COURT: Yes.

13

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Direct - "Maria" - Shihata

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1 (Conference at sidebar)

2 THE COURT: Can we make that lower? Can we make that
3 lower?

4 MS. SHIHATA: Okay. I'll try to make it so you can
5 hear me, Judge. I just note that it's 5:50. I think this may
6 be a good stopping point because I'm about to get into another
7 incident and I think there's no way we're going to finish the
8 next incident in the next ten minutes.

9 THE COURT: And how many more do you have to go? I
10 mean how much more time --

11 MS. SHIHATA: She's -- I think she's going to be on
12 direct for at least --

13 MS. ARGENTIERI: I think she has an hour and a half
14 to two hours at the most.

15 MS. SHIHATA: Yeah, on direct.

16 (Conference at sidebar ends at 5:51 p.m.)

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1 THE COURT: Ladies and gentlemen we're going to
2 recess until 10:00 tomorrow morning. Thank you for your time
3 and attention today.

4 THE COURT: All right. I'll see you tomorrow.

5 MR. RICCO: Good night, Judge.

6 MS. SHIHATA: Good night, Judge.

7

8 (Trial adjourned at 5:04 p.m.)

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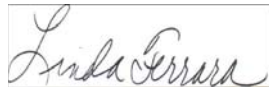
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1 I, LINDA FERRARA, Certified Electronic Transcriber,
2 certify that the foregoing is a correct transcript from the
3 official electronic sound recording of the proceedings in the
4 above-entitled matter.

5
6 

7 _____ January 9, 2018

8 Linda Ferrara, CET 656
9
10

11 I, CHRISTINE FIORE, Certified Electronic Court Reporter
12 and Transcriber, certify that the foregoing is a correct
13 transcript from the official electronic sound recording of the
14 proceedings in the above-entitled matter.

15
16 

17 _____ January 9, 2018

18 Christine Fiore, CERT-410
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